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SUPREME COURT OF THE UNITED STATES.

No. ~~339.~~ 78

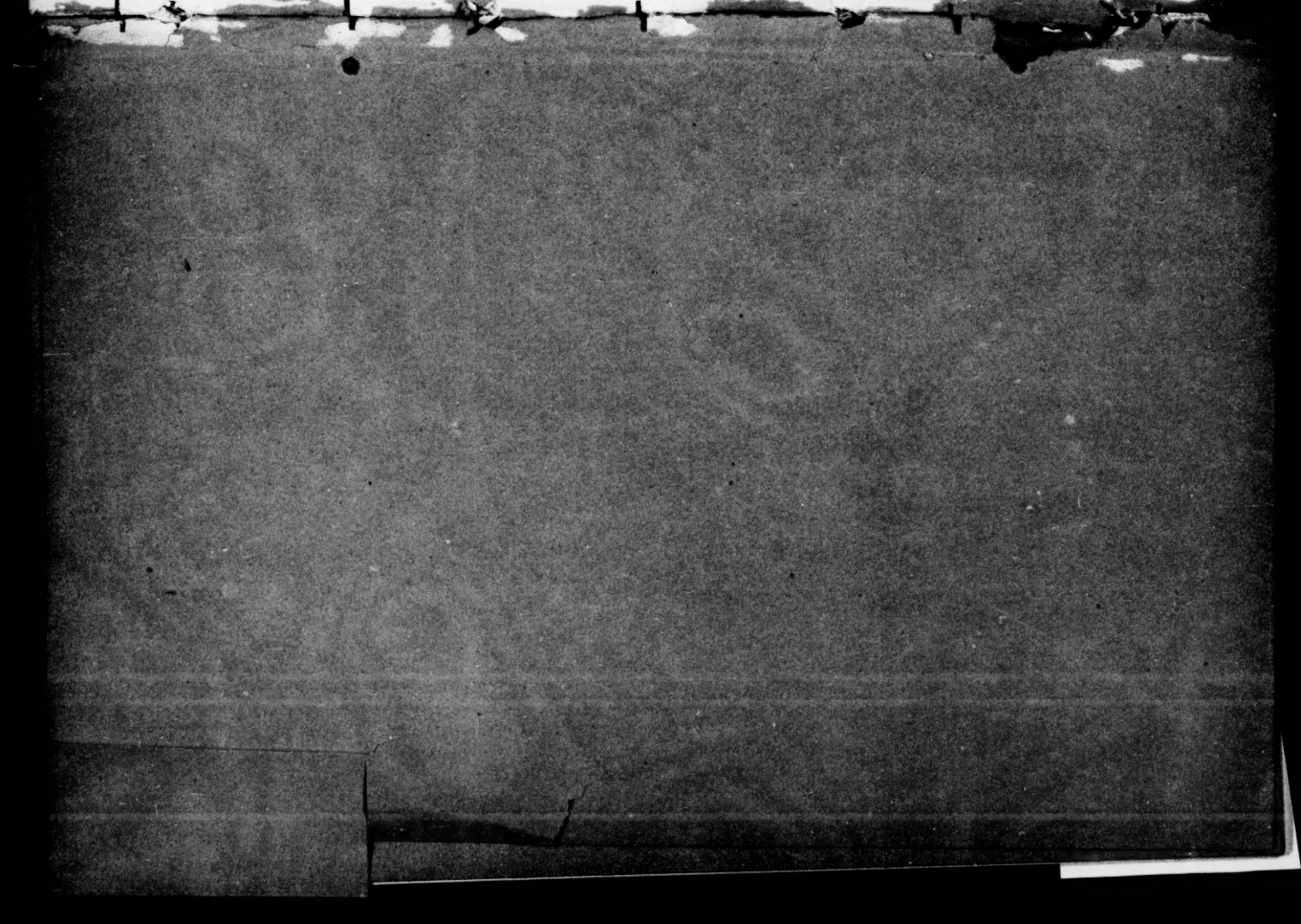
ISAAC L LYON, APPELLANT,

vs.

FRANZ POLLOCK AND CATHARINE POLLOCK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED JANUARY 3, 1876.



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a UNITED STATES OF AMERICA:

In the United States circuit court, 5th circuit, western district of Texas, sitting at Austin.

ISAAC L. LYON, APPELLANT,
vs.
FRANZ POLLOCK AND CATHARINE POLLOCK, appellees.

The President of the United States to Franz Pollock and Catherine Pollock or their attorneys of record, Jacob Waelder or William M. Walton:

You are hereby cited and admonished to appear at the next term of the Supreme Court of the United States to be held at Washington, on the second Monday of October next, to show cause, if any there be, why the decree rendered in your favor by the circuit court of the United States, sitting in chancery at Austin in said district, in a certain cause depending between Franz Pollock and Catharine Pollock as complainants and Isaac L. Lyon defendant, numbered 72, on the chancery docket of said court, at Austin, should not be reversed, and speedy justice be done to the parties in that behalf in pursuance of an appeal
b obtained by the said Isaac L. Lyon, the said defendant, according to his petition filed in the circuit court of the United States for the western district of Texas, at Austin.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, at Austin, this 28 day of September, A. D. 1875.

T. H. DUVAL,
U. S. Judge.

Test with seal of court.

M. HOPKINS, *Clerk.*

c (Indorsed:) No. 72. In equity. Isaac L. Lyon, appellant, vs. Franz Pollock and Catharine Pollock, appellees. Citation on appeal. Issued 28 Sept., 1875. M. Hopkins, cl.

Came to hand Sept. 28, 1875. Executed Sept. 29, 1875, by delivering to W'm Walton, one of the attorneys of record named within, in person a true copy of this citation on appeal.

THO'S F. PURNELL,
U. S. Marshal.
Per S. W. P. PURNELL, *Deputy.*

1 In circuit court of the United States, 5th circuit, in and for the western district of Texas, at Austin, sitting in equity.

Be it remembered, that at a term of the circuit court of the United States for said district, begun and held at Austin, in said district, for the January term, A. D. 1875, among other the following proceedings were had:

FRANZ POLLOCK & CATHARINE POLLOCK, complainants,
vs.
ISAAC L. LYON, DEFENDANT.
No. 72. Chancery.

a UNITED STATES OF AMERICA:

In the United States circuit court, 5th circuit, western district of Texas, sitting at Austin.

ISAAC L. LYON, APPELLANT,
vs.
FRANZ POLLOCK AND CATHARINE POLLOCK, appellees.

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FRANZ POLLOCK & CATHARINE POLLOCK, complainants,
vs.
ISAAC L. LYON, DEFENDANT.
No. 72. Chancery.

ISAAC L. LYON, APPELLANT,
vs.
FRANZ POLLOCK & CATHARINE POLLOCK, APPELLEES.

2 In the circuit court of the United States in and for the western district of Texas, at Austin, in equity, came complain'ts and filed their bill.

The bill is endorsed to wit: "No. 72. Ch'y' In U. S. circuit court Austin. Franz & Catherine Pollock vs. Isaac L. Lyon. Bill filed July 8th, 1873. M. Hopkins, clerk." And in words to wit:

To the honorable the judges of the circuit court of the United States; within and for the western district of the State of Texas, sitting in equity:

Franz Pollock and Katherine Pollock, his wife, of the County of Bexar, in the State of Texas, and citizens of the State of Texas, bring this their bill against Isaac L. Lyon, of the county of Wayne, in the State of Michigan, and a citizen of the State of Michigan.

And thereupon your orator and oratrix complain and say, that on the 24th day of August, A. D. 1865, the said Isaac L. Lyon was the legal owner of the two certain lots or pieces of land, lying in the said county of Bexar, and State of Texas, and the said western district of the said State of Texas, described as follows, to wit:

3 Two certain lots being known as lots No. nine and ten (9 &10), in block No. one (1), of what is known as "Beckville," in the city of San Antonio, being an addition made to the said city of San Antonio by one Joseph H. Beck, in the year 1852, out of the Baron de Bastrop labor, and a plat of which said Beckville, made by one W'm Scott Smythe, is now of record in the office of the city surveyor of San Antonio.

That said Lyon, then being the owner of said two lots on said 24th day of August, 1865, did make, execute, and deliver unto I. A. Paschal a certain instrument of writing, whereby he, the said Lyon, authorized and empowered the said Paschal to make sale of any and all real estate of which he, the said Lyon, was then seized, and situated in said county of Bexar, in the State of Texas, and that the two lots above described were two of the pieces of real estate which the said Paschal was thus authorized to sell by the said Lyon.

A copy of the instrument here referred to, by which the said power to make sale was granted to the said Paschal by the said Lyon,
4 it is attached to this bill, marked "Exhibit A" and made a part thereof.

Your orator and oratrix are informed and believe, and therefore further say, that prior to the date of the instrument aforesaid and until on or about the first day of July, 1865, W. A. Bennett, of the said county of Bexar, was the duly authorized agent and attorney in fact of the said Isaac L. Lyon, in and about the business of said Lyon in the county of Bexar, State of Texas, holding a full power of attorney from said Lyon to manage and control, sell and convey, any and all property of said Lyon, both real and personal; that on or about said last-mentioned day the said Bennett transferred the business of his said agency to the said Paschal, fully informing at the same time the said Lyon of the transfer he had made to the said Paschal; that upon the information thus communicated by the said Bennett to the said Lyon he, the said Lyon, did write, execute, and deliver to the said Paschal the instru

ment above mentioned and did thereby authorize and empower
5 the said Paschal to make sale of the two lots of land above-described among other real estate then owned by said Lyon, situated in said county of Bexar.

Your orator and oratrix are further informed and believe, and therefore further same that after the transfer of said agency by said Bennett to the said Paschal, and after the said Lyon had executed and delivered the instrument aforesaid to the said Paschal, he, the said Paschal, was by the said Lyon regarded, treated, and recognized as the duly authorized agent and attorney of said Lyon, and your orator and oratrix therefore say that he, the said Paschal, was by virtue of the premises the duly authorized agent and attorney of the said Lyon with power and authority to make sale of the two lots of land hereinbefore described; that being so vested with power and authority to sell the said I. A. Paschal did, on the 12th day of October, 1865, as the attorney and agent of said Lyon, make sale of the two lots above described to your oratrix, the said Catherine Pollock, she being the wife of the said Franz Pollok, your orator.

6 That your oratrix, upon the sale so made to her by the said Paschal, paid to him, the said Paschal, as the agent and attorney of said Lyon, the sum of four hundred and twenty-five dollars in specie, as the consideration of the two lots aforesaid, and that the said Paschal thereupon, as the agent and attorney of said Lyon, made, executed, and delivered to your oratrix a certain instrument of writing, to wit, a deed of conveyance, in and by which, in consideration of the same aforesaid, the said Paschal, as such attorney, granted, bargained, released, conveyed, and delivered unto your oratrix the two lots of land above described, a copy of which said instrument is hereto attached as part of this bill, marked "Exhibit B," and your orator and oratrix say that the sum so paid by your oratrix for said two lots to said Paschal was the full value thereof at the time of said sale and payment.

Your orator and oratrix further say, that after the sale aforesaid by said Paschal to your oratrix, the said Lyon ceased to regard said
7 two lots as his property, that he made no claim to the same in any manner, and that he acquiesced in the sale thereof; that he did not exercise or attempt to exercise any control or ownership over said two lots, nor has he at any time since said 12th day of October, 1865, paid any taxes thereon; but on the contrary your orator and oratrix say that on the day last aforesaid your orator and oratrix took possession of and used and enjoyed said two lots as their own property, and that your orator and oratrix have had and held continuous, peaceable, adverse, notorious, and uninterrupted possession, use, and enjoyment of said two lots, claiming the same as their own property, making improvements thereon as hereinafter set forth until the institution of the suit hereinafter mentioned, and that they have during all that time, to wit, from the said 12th day of October, 1865, down to the present time paid all taxes assessed thereon for State, county, and city purposes, all of which your orator and oratrix verily believe and so charge was with the knowledge and consent of the said Lyon.

8 Your orator and oratrix further say, that the amount of the purchase money paid for said two lots by your said oratrix, was by the said Paschal, as attorney of said Lyon, received, and, as your orator and oratrix are informed and believe, and therefore say, by him, the said Paschal, appropriated, used, and paid out in discharge of debts and liabilities of the said Lyon, with the consent of him, the said Lyon.

That the said Lyon was at the time of the sale aforesaid, as well as

before and since that time, the owner of six hundred shares of the stock of the San Antonio Gas Company, a body corporate in the county of Bexar, aforesaid, one-half of which stock had been paid up by the said Lyon, the other half being unpaid and liable to assessments by said company, and each of said shares being one hundred dollars; that an assessment upon the stockholders of said company was made on the 18th day of April, 1863, of 2½ per cent., which was reduced on the first of September, 1865, so as to amount to *amount to* four hundred and fifty dollars upon the stock of said Lyon.

9 That a further assessment was made on the 31st day of October, 1865, amounting to fourteen hundred and seventy-five dollars upon the shares of said Lyon; that a still further assessment, amounting on the shares of said Lyon to the further sum of fourteen hundred and seventy-five dollars was made on the 31st day of March, 1866, and that a still further assessment was made on the first day of March, 1867, amounting on the shares of the said Lyon to the sum of twenty-three hundred and sixty dollars.

That for the purpose of saving the stock of said Lyon, the said Paschal paid the several assessments aforesaid, all of which assessments were duly made by said gas company, and that the sum received by said Paschal from your oratrix as aforesaid was appropriated and used by the said Paschal in part payment of the assessments aforesaid, and that thereby the said Lyon has received and accepted, for his own use and benefit, the said amount of purchase-money paid as aforesaid by your oratrix, and that by reason of the premises your oratrix

10 has fully paid the value of the two lots aforesaid to the said Lyon, in accordance with the terms entered into by the said Lyon through his said attorney with your oratrix.

Your orator and oratrix further say that upon the purchase of the two lots aforesaid by your oratrix, to wit, on the 12th day of October, 1865, she paid the purchase-money thereof to the said Paschal as agent of the said Lyon, to wit, the sum of four hundred and twenty-five dollars in specie; that your orator and oratrix thereupon took and have since held possession thereof in good faith; that they have made permanent and valu'ble improvements on the said land during the time they held possession of the same; and that their said improvements are of the value of six thousand two hundred and fifty dollars. And your orator and oratrix well hoped that no dispute would have arrisen touching their ownership to the two lots above described, but that the said Lyon would have continued to acquiesce in the sale of said two lots by his said attorney, as in conscience and equity he ought to have done.

11 But now so it is, may it please your honors, that the said Isaac L. Lyon denies the authority of the said I. A. Paschal to make the sale aforesaid, and disregarding the rights of your orator and oratrix, as well as the sale made by his agent as aforesaid, and denying their right to a conveyance or deed under said sale, the said Lyon did, to the June term, 1873, file his petition in the circuit court of the United States for the western district of Texas, for the recovery of the said two lots of land, and that at the said June term, 1873, of said court, he, the said Lyon, recovered a judgment against your orator and oratrix for the said two lots of land, and that upon said judgment a writ of possession will issue, and your orator and oratrix will be ousted from the possession of said two lots, unless the said Lyon is restrained and enjoined by your honors' most gracious writ of injunction or order staying further proceedings under and upon said judgment.

Your orator and oratrix humbly shew that the judgment above set forth was obtained by said Lyon upon the trial of the legal title
12 above to the said lots, and that the right of your orator and oratrix, as hereinbefore set forth, are of an equitable nature and constitute a good and perfect equitable title to said land in your oratrix, and could not be asserted or received as a defense in a court of law.

Yet your orator and oratrix are advised that the facts before set forth in this bill constitute your oratrix the owner in fee simple of the said two lots, and that your orator and oratrix are the rightful possessors thereof, and they aver that the acting, doings, and pretences of the said Lyon are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator and oratrix.

In consideration whereof, and for as much as your orator and oratrix are entirely remediless in the premises, according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable; to the end, therefore, that the said Isaac L. Lyon may, if he can, show why your orator and oratrix should not have the relief hereby prayed,
13 and may upon his corporal oath, and according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make whether the allegations contained in complainant's bill are true; and, if nay, how, with truth, is the contrary to be made out? or where, in each and every particular, is any or all of the said allegations of complainant's bill untrue?

And that the said Isaac L. Lyon may come to a fair and just account, your orator and oratrix humbly pray that the premises considered, the said Lyon may be decreed to make and execute a proper conveyance to the two lots hereinbefore described, and that the title in fee simple to the same may be decreed to be in your orator and oratrix, free and discharged from any and all claim of the said Lyon and all persons claiming through and under him.

And your orator and oratrix further humbly pray, that in case the relief above prayed for cannot be granted to them by your honors, but that a decree of eviction is entered against them and the judgment of the circuit court, heretofore rendered and above set forth, is al-
14 lowed to be carried into execution, then, and in that case, they may have the value of their improvements allowed them, and judgement or a decree therefor, in accordance with the statute of the State of Texas in such case made and provided, and that in that case the amount paid by your oratrix for said two lots, with lawful interest thereon from the date of its payment, may also be decreed to them, with a lien upon said two lots to secure the payment thereof; and that your orator and oratrix may have such further and other relief in the premises as the nature of their case shall require and to your honors shall seem meet:

May it please your honors to grant to your orator and oratrix not only the mostgracious writ or writs of injunction of the United States of America, issuing out of and under the seal of this honorable court, to be directed to the said Isaac L. Lyon, to restrain him from having a writ of possession issued upon the judgment heretofore rendered as above set forth, or from the execution of said judgment in any manner,
15 and to restrain him from any and all further proceedings at law against your orator and oratrix touching any of the matters in question, but also the most gracious writ or writs of subpœna of the said United States of America, to be directed to the said Isaac L. Lyon,

to be served personally upon him, should he be or come within the jurisdiction of this honorable court, thereby commanding him at a certain day, and under a certain pain therein to be specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet, and as shall seem agreeable to equity and good conscience.

And your orator and oratrix further pray that inasmuch as the said Isaac L. Lyon is a non-resident of this, the State of Texas, and is out of the jurisdiction of the court, but hath attorneys of record in the said case at law herein aforesaid, and that inasmuch as service
16 cannot be had upon the said Lyon by personal service so as to compel him to answer the prayer herein made for preliminary injunction, that the subpœna may be served upon his said attorneys of record, viz: Messrs. Chandler, Carelton and Robertson, residents in the city of Austin, within the said western district of Texas, and that when said service of subpœna shall be made on said attorneys of record, such service may be deemed and held good service on the said Isaac L. Lyon.

And he further prays that in the event your honors cannot grant the full relief herein prayed, then they specially pray that the writ of injunction which your honors grant preliminary, may on final trial be perpetuated, and your orator and oratrix be maintained and protected in their said equitable title above described, and as in duty bound your orator and oratrix will ever pray.

FRANK POLLOK.
CATHERINE POLLOK.
Per WAELDER & UPSON,
Counsel for Complainants.

WALTON & GREEN,
WAELDER & UPSON,
Sols. frr Comp.

17 THE STATE OF TEXAS,
County of Bexar, Western District of Texas:

On the 5th day of July, A. D. 1873, personally appeared before me, Julius Hoyer, a notary public in and for said county, Franz Pollok and Catherine Pollok, who, after being by me duly sworn, depose and say that the facts contained in the foregoing bill, as far as stated upon the knowledge of affiant are true, and those stated upon information and belief they believe to be true.

FRANK POLLOK.
her
CATHERINE + POLLOK.
mark.

Sworn to and subscribed before me this 5th day of July, A. D. 1873. In witness whereof I have hereunto subscribed my name, and affixed my official seal.

[L. S.]

JULIUS HOYER,
Notary Public, Bexar County, Texas.

18 EXHIBIT A.

MONTEREY, *Aug. 24th*, 1865.

I. A. PASCHAL:

MY DEAR SIR: I am just in receipt of a letter from M'r Bennett, in

forming me that he has placed all my papers for safe keeping in your possession. In better or safer hands he could not have given them. The position you have occupied during the past 4 years of war is a very enviable one, as glorious as it has been dangerous. I congratulate you upon the issue. I am sure you have no reason to regret your decision to abide by the Union. I trust you will be rewarded in proportion as traitors shall be cursed. We have a herd of Texas traitors in Mexico at the present time. It is my hope they will never return.

In regard to my property, I can say but little. I am unable to go to San Antonio at present. My family are sick in the north and demand my presence there. M'r Kinney's death leaves a large business on my hands to be settled.

I wish you to manage as you would with your own. If a good
19 opportunity offers to sell everything I have I would be glad to sell.

It may be, parties will come into San Antonio who will be glad to purchase my gas stock and real estate. I shall be glad if you find time to write to me. If you will, give me a description of affairs as they exist at present. I shall probably remain here 2 months yet.

I notice you have a note of M'r Fonda's belonging to me. He left some stock in the hands of his adopted son. Can you not find out what has become of it, and if possible get hold of it as security? Can you tell me whether I can collect notes that have been paid by parties in confed. money to N. O. Green? I do not see how the payment under such circumstances can release them, any more than the payment to N. O. Green of the am't of northern indebtedness can release a merchant from to pay his northern creditor.

I enclose a letter for my wife. It is impossible to send letters by Matamoras.

The road has been blockaded for a long time. If you have a regular mail I shall be greatly obliged if you will mail this letter; if no mail, will you do me the favor to send by private hands to N. Orleans?

Most respect'y yours,

I . L. LYON.

20 EXHIBIT B.

THE STATE OF TEXAS,
County of Bexar:

[U. S. int. rev. stamp, $0.50.]

Know all men by these presents, that I, I. L. Lyon, acting by and through my attorney in fact, I. A. Paschal, of the county of Bexar, and State of Texas, for and in consideration of the sum of four hundred and twenty-five dollars in specie, to me in hand paid by Catherine Pollok, of the county of Bexar, and State of Texas, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and do by these presents, grant, bargain, sell, release, and convey unto the said Catherine Pollok, her heirs, assigns, the following described property, to wit, lots No. 9 & 10, in block No. 1, in Beckeville, bounded on the northeast by South street, on the southwest by an alley, on southeast by Second street, and on the northwest by lot No. 11. Each lot has a front of 20 varas on South street, and a depth of 50 varas. Together with all and singular the rights, members, hereditaments, and
21 appurtenances, thereunto belonging, or in any wise incident or appertaining; to have and to hold the above described property unto the said Catherine Pollok, her heirs or assigns, or legal representatives, forever.

And I do hereby bind myself, heirs, executors, and administrators, to warrant and forever defend all and singular the said premises, unto the said Catherine Pollok, her heirs and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

In testimony whereof I have hereunto subscribed my name at San Antonio, this the twelfth day of October, A. D. 1865.

I. L. LYON,
By his attorney in fact I. A. PASCHAL.

Signed in the presence of—
JOHN JAMES.
S. G. NEWTON.

(Endorsed upon the bill:)
The Hon. Thomas H. Duval, U. S. judge for the district, endorsed the order granting the injunction restraining writ of possession on the judgment at law obtained by the deft Isaac L. Lyon against Catherine & Franz Pollock, at the June term, 1873, and ordering said process to issue to said Lyon to be served on his att'ys of record.

22 The order endorsed is in words, to wit:

U. S. circuit court in chancery sitting.

AUSTIN, *July 21st*, 1873.

The clerk of the U. S. circuit court at Austin, Texas, will issue the writ of injunction as prayed for in the foregoing bill, enjoining and restraining the defendant herein, Isaac L. Lyon, his agents or attorneys, from having a writ of possession under and by virtue of a payment at law rendered by the circuit court of the United States for the western district of Texas at Austin, at the June term, A. D. 1873, in a certain cause wherein the said Lyon was plaintiff, and the complainants to this bill were defendants, and from all further proceedings thereunder until the further order of this court in the premises.

The clerk will also issue writs of subpœna as prayed for to said Lyon, to be served on the attorneys of the pl'ff in the suit at law, returnable according to law.

T. H. DUVAL,
U. S. Judge.

23 And afterwards, to wit, on the 8th day of July, A. D. 1873, the following subpœna was issued, endorsed, to wit: "Chancery No. 72. United States circuit court in and for the western district of Texas, at Austin sitting. Franz and Catherine Pollok vs. Isaac L. Lyon. Subpœna in chancery to F. W. Chandler, att'y for Isaac L. Lyon. Issued 8th day of July, A. D. 1873. M. Hopkins, clerk. Filed July 18th, 1873. M. Hopkins, clerk. Walton & Green. Waelder & Upson, solicitors." And is in words, to wit:

Subpœnas & returns.—July 8, '73.

Circuit court of the United States for the western district of Texas, at Austin, sitting in chancery.

UNITED STATES OF AMERICA,
Western District of Texas:

The President of the United States to the marshal of the western district of Texas, and to all to whom these presents shall come, greeting:

Whereas Franz Pollok and Catherine Pollok, his wife, of the county

of Bexar, and State of Texas, having filed their bill of complaint against Isaac L. Lyon, of the county of Wayne, in the State of Michigan, represented by his attorneys of record in this court by F. W. Chandler, Fred Carleton, and Robertson in said district, who is
24 made defendant, we command you, and every one of you, the defendants herein named, that, laying all matters and excuses aside, you do cause an appearance to be entered for you in our court of chancery to the bill herein recited and exhibited against you; and that you do answer concerning such things as shall then and there be alleged against you, and observe what our said court shall direct in this behalf, upon pain of an attachment issuing against your person, and such other process for contempt as the court shall award.

Witness the Hon. Nathan Clifford, associate justice of the Supreme Court of the United States, and the seal of our said circuit court, at Austin, this 8th day of July, A. D. 1873.

[L. S.] M. HOPKINS, *Clerk.*

Appearances are to be entered on or before the first Monday of August next rules; otherwise the bill may be taken as confessed.

M. HOPKINS, *Clerk.*

The marshal's return on the same is in words, to wit:

I certify that on the 8th day of July, 1873, at Austin, Texas, in my district, I personally served the within writ on the within-named
25 F. W. Chandler, attorney, by showing to him the same with the seal of the court thereon, and by leaving with him a copy thereof with the seal of the court thereon.

July 8th, 1873.

THOMAS F. PURNELL,
U. S. Marshal.

Service, $2 00.

And afterwards, to wit, on the 23d day of July, A. D. 1873, the following writ of injunction was issued endorsed, to wit: "72. Ch'y. In U. S. circuit court, Austin. Franz and Catherine Pollok vs. Isaac L. Lyon. Writ of injunction issued July 23, 1873. M. Hopkins, clerk. Serve Chandler, Carleton, & R. with accompanying copy. Filed July 25th, 1873. M. Hopkins, clerk. Waelder & Upson. Walton & Green, att'ys," and is in words, to wit:

Injunction & return.

United States circuit court in and for the western district of Texas, at Austin, sitting for the June term, 1873.

Whereas Franz & Catherine Pollok, of the county of Bexar, western district of Texas, on the 8th day of July, A. D. 1873, filed on the equity side of this court his bill in chancery No. 72, praying the court, for the reasons therein assigned, for its writ of injunction enjoining and restraining the plaintiff Isaac L. Lyon, in suit at law, No. 1324,
26 against the said Franz & Catherine, therein defendants, and all other persons from proceeding further with said suit at law, or from enforcing or attempting to enforce the judgment at law, entered at the June term, 1873, of said court, by writ of possession or otherwise, until the further order of the court. And it having pleased the Hon.

Thomas H. Duval, sitting at said term as circuit court judge, to grant the prayer of the complainant and to order that said writ of injunction should issue:

Now, therefore, these are to command you, as marshal of the western district of Texas, to enjoin and restrain the said Isaac L. Lyon and his said attorneys of record, Chandler, Carleton and Robertson, from any further proceeding in said suit at law, or from attempting to enforce the same by process of this court, or in any other manner, until after hearing the further order of the court may be made thereon.

You will serve Chandler, Carleton & Robertson with a copy of this writ of injunction, and make return of your proceedings forthwith.

Witness the Hon. Nathan Clifford, associate justice of the Supreme Court of the United States, and the seal of our said circuit court, at Austin, this 23d day of July, A. D. 1873.

[L. S.] M. HOPKINS, *Clerk.*

27 *Return.—Service on att'y of record.*

Return is endorsed on the writ:

Served July 24, 1873, by delivering to F. W. Chandler in person a true copy of this writ, certified by the clerk of the U. S. circuit court, at Austin, under the seal of the court.

THOMAS F. PURNELL,
U. S. Marshal,
Per JOHN H. TRAYNHAM, *Deputy.*

Service, $2.00.

And afterwards at September rules, to wit, Sept. 1, 1873, the following entry appears:

Appearance.

FRANZ & C. POLLOCK
vs.
ISAAC L. LYON. } No. 72. Chancery.

Now comes Chandler, Carleton and Robertson, sol's, and enter the appearance of Isaac L. Lyon in this cause.

M. HOPKINS, *Clerk.*

And afterwards, at October rules, to wit, Oct. 6, 1873, the following entry appears. Franz & Cath. Pollock vs. Lyon.

Entry rules.

F. & K. POLLOCK
vs.
ISAAC L. LYON. } No. 72.

On this day came Chandler, Carleton & Robertson, sol's for the def't, Isaac L. Lyon, and files the answer of the def't in this cause.

M. HOPKINS, *Clk.*

Answer of def't Isaac L. Lyon.

Answer is in words, to wit:

Filed Oct. 6, 1873.

M. HOPKINS, *Clk.*

FRANZ POLLOCK & KATHARINE POLLOCK, complainants, *vs.* ISAAC L. LYON, DEFENDANT. } No. 72.

Bill in chancery pending in the circuit court of the United States in the western district of Texas, at Austin.

The answer of the def't, Isaac L. Lyon.

28 This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, answering, saith that he was, on the 24th day of August, 1865, the legal and equitable owner of the lot or peice of land described in the complainants' bill of complaint, and avers that he is now the legal and equitable owner of said lot or peice of land; but this defendant most positively denies that he executed to the said I. A. Paschal any instrument of writing on the 24th day of August, 1865, or upon any other day or time, by which he authorized or empowered the said I. A. Paschal to sell or convey the lot of land described in complainants' bill of complaint, or any peice or tract of land.

29 And this defendant most positively denies that there is in the letter written by this defendant to said I. A. Paschal, dated 24th of August, 1865, a copy of which is appended to complainants' bill of complaint, marked "Exhibit A," vested any power or authority in the said I. A. Paschal to sell or convey said lot or peice of land, and this defendant most positively denies that he intended to authorize or empower the said I. A. Paschal to sell or convey said lot or peice of land, or that said letter or instrument of writing did confer upon the said I. A. Paschal any equitable or legal right or authority to sell said lot or peice of land to the complainants or either of them, or to any one else.

And this defendant most positively denies that he ever did represent to any party or parties that the said I. A. Paschal was his agent or attorney, with the authority to make sale of the aforesaid lot, or of any lot or peice of property this defendant owned in Texas or elsewhere. That the said I. A. Paschal never had any authority to act as the agent or attorney of this defendant, and to collect or secure some doubtful debts due this defendant, if he could; and this defendant

30 further denies that he ever at any time authorized or empowered said I. A. Paschal to sell or convey said lot of land.

This defendant admits that prior to the first day of August, 1865, the said W. A. Bennett held a power of attorney from the defendant, a copy of which is hereto appended, marked "Exhibit A," and made a part of this answer.

But this defendant denies that said power of attorney to the said W. A. Bennett contains any power of substitution, or that it conferred any power or authority upon the said W. A. Bennett to substitute the said I. A. Paschal to act as agent of this defendant, or any one else, to sell or convey the aforesaid lot or any other property that belonged to this defendant.

This defendant admits that prior to the 24th day of August, 1865, the said W. A. Bennett did deliver to the said I. A. Paschal, for safe keep-

ing, the papers of this defendant, but this defendant denies that there was any transfer in writing of said papers, or any other thing done between the said W. A. Bennett and the said I. A. Paschal, more than that the said W. A. Bennett delivered said papers for safe keeping to the said I. A. Paschal, or that the said W. A. Bennett under-
31 took to confer upon the said I. A. Paschal the power or authority to sell or convey the aforesaid lot of ground, or that the said I. A. Paschal at the time received said papers with any other understanding or purpose than to safely keep them for this defendant.

This defendant admits that when he was informed that the said W. A. Bennett had delivered his papers to the said I. A. Paschal for safe keeping, that he wrote the said I. A. Paschal the letter, a copy of which is made a part of complainant's bill of complaint, but this defendant most positively denies that he did, by the writing and signing of said letter, authorize or empower the said I. A. Paschal to sell or convey said lot or peice of land or any other property that belonged to this defendant in San Antonio or elsewhere, or that he intended by the execution of said letter to authorize or empower the said I. A. Paschal to sell or convey the same.

And for further answer, this defendant most positively denies that after he had written the aforesaid letter to the said I. A. Paschal, dated 24th of August, 1865, or at any other time before or since that
32 date, that he regarded or treated or recognized the said I. A. Paschal as the duly authorized agent or attorney of this defendant, further than to preserve his papers, and in case he found any party or parties that wished to purchase all the property this defendant owned in San Antonio, for him, the said I. A. Paschal, to inform this defendant of the fact, so that this defendant might negotiate the sale.

And this defendant says if the said I. A. Paschal, on the 12th day of October, 1865, or upon any other day or time, did sell or convey the aforesaid lot or peice of land to the complainant Catherine Pollock, as the agent or attorney of this defendant and received the money therefor, as alleged in complainants' bill of complaint, this defendant most positively denies that the said I. A. Paschal had any wright or authority from this defendant to do or perform any one or all of said acts, either written or verbal, and avers that the said I. A. Paschal had no authority, written or verbal, from this defendant, directly or indirectly, to sell said lot or to execute any deed to the complainants for the same, or to
33 receive any money therefor, in the name or for or on account of this defendant. For the aforesaid reasons and the reasons hereinafter stated by this defendant, said alleged sale by the said I. A. Paschal and purchase by complainant Catherine Pollock, was and is null and void, and has no binding force or effect upon this defendant, neither does the same in any wise effect the superior title of this defendant to said lot.

This defendant says he has no personal knowledge of the actual value of said lot at the date of the pretended purchase thereof by complainant Catherine Pollock, on the 12th day of October, 1865, because he says when the war broke out it was known that he was what was called a Union man, a man opposed to the Confederate government, and he was informed, and believed, and from such information and belief charges the fact to be that there was a secret society and combination of men in favor of the Confederate government, known as the committee called the Knights of the Golden Circle, a number of whom were appointed to hang this defendant on account of his known fidelity to the
34 United States Government; that in consequence thereof he was

compelled to leave the country in a secret manner to save his life, and in such haste that he had no time to secure his papers; and after the war ceased, to wit, in the year 1865 and 1866, he was informed and believed that his life would be in imminent danger if he returned to San Antonio to look after and attempt to recover the property that he had been no better than robbed of; for the above reasons this defendant says he is unable to state, of his own knowledge, whether 425 dollars was a fair value for the lot or peice of land involved in this suit at the date of complainants' pretended purchase, but says he is informed and believes, and, from such information and belief, he charges the fact to be, that said lot was, at the date of said pretended purchase by complainants, worth more than 425 dollars, to wit, the sum of , and that he is informed and believes and, from such information and belief, alleges that said lot is now intrinsically worth without the improvements alleged to be put thereon by complainants.

35 And further answering, this defendant admits that the deed of conveyance under which this defendant claimed and owns the aforesaid lot or peice of land, was in the hands of the said I. A. Paschal for safe keeping for this defendant, and this defendant avers for no other purpose, and if the said I. A. Paschal did deliver said deed to complainants, which this defendant neither admits or denies, but asks that complainants may be held to strict proof of the same, then this defendant avers that the said I. A. Paschal had no power, right or authority to deliver the same to complainants, and that the same was done without authority, knowledge, or consent of this defendant. And for further answer, this defendant says he knew that I. A. Paschal was deeply involved in debt and that he was a very car'less business man, and while he would employ him as a lawyer, he never would have been willing to entrust him with a power of attorney to sell and convey real estate and receive the money therefor.

36 And this defendant most positively denies that since he first purchased said lots that he has ever ceased to regard said lots as his own property in fee-simple, or that he has ever ceased to claim the same, or that he has at any time, either by word, act, or inuendo, acquiesced in the pretended sale by the said I. A. Paschal to the complainant or any other party, and says the charge is wholly untrue; that on the contrary this defendant has, at all times and upon all occasions, when the same was referred to or spoken of in his presence, claimed the same *was referred to or spoken of in his presenee, claimed the same* as his own property, and denied the claim of complainants and all other parties; that the only reason why he has not long since attempted to take actual possession of said lot, as well as his other property in San Antonio, is because he was informed and believed that he would be in danger of great bodily harm, if not in danger of loosing his life, if he were to attempt it, and for no other reason has he failed to take actual possession of said lot and his other property in San Antonio.

37 This defendant admits that he has not paid any taxes on said lot since 1865; neither does this defendant know who has paid the taxes thereon except what he has learned from the allegations in the complainants' bill of complaint, which he neither admits or denies, but says if the complainants have paid the taxes thereon that they have done so without the request, knowledge, authority, or consent of this defendant, and, therefore, this defendant avers that he is not responsible for, or liable to the complainants for, the amount so paid by them, if anything.

And further answering, this defendant says that he has no knowledge

of the complainants or either of them taking possession of said lot, or when they did so, or how long they have had the same in actual possession, or what amount of improvements they have put upon the same, or the value thereof, or when they did it, except from the allegations in their bill of complaint, none of which does this defendant admit, but asks that the complainants may be held to strick proof of the same, and this defendants says that if complainants took possession of said lot and made any improvements thereon, that it was done without the authority, knowledge, or consent of this defendant, neither directly or indi-
38 rectly, with full knowledge upon their part that said lot was the property of the defendant and not theirs; that said improvements, if any such have been made, were made without the knowledge, consent or desire of this defendant, by reason whereof this defendant alleges that he is not chargeable with the value of said alledged improvements or any part thereof.

And, further answering, this defendant says that if the complainants ever did pay the said I. A. Paschal what they allege to be the purchase-money for said lot, which he does not admit, and if the *the* said I. A. Paschal ever did attempt to appropriate the same or any part thereof to the payment of any alleged debt or liabilities against this defendant, which this defendant in no wise admits, then he most positively avers that the said I. A. Paschal received and paid out the same without the authority, knowledge, or consent of this defendant, either directly or indirectly; but this defendant admits that when he was forced to leave the country he was the ow'er of 600 shares of stock in said gas company, and that he paid up half of the amount of said stock, and avers that said
39 company was largely indebted to him when he left the State and country; that he has no knowledge of the assessment of 2½ per cent. on the 18th of April, 1863, except what he learns from the allegations in the complainant's bill of complaint; that he in no wise admits, but this defendant says if said assessment was so made, that it was not, and is not, binding upon this defendant, because he says that said assessment was made in the State of Texas, one of the then so-called Confederate States, which was then in a state of rebellion against the national government, the United States of America, and that this defendant was then, and has ever since been, a resident of and adherent to the said United Sates, living without and beyond the limits of the Confederate States, by reason of which said alleged assessment was not, at the date thereof, nor at the date of its alleged payment, as well as all the other alleged assessments and payments upon said gas stock, legal or binding upon this defendant. And this defendant further avers that if the said I. A. Paschal ever did pay any of the alleged installments assessed upon the stock of said gas company, which he does not admit, then this defendant most positively avers that each and all of such
40 assessments were made, and the payments *and the payments* were made without the authority, knowledge, or consent of this defendant, either directly or indirectly, and that this defendant had no notice of said assessments being made until long since said pretended payments had been made; by reason thereof none of the aforesaid actings and doings on the part of the said I. A. Paschal with the complainants are legal or binding upon this defendant.

And this defendant most positively denies that he has at any time either by word, act, or inuendo, either in writing or verbally acquiesced in the alleged act of the said Paschal in receiving or paying said sum of money on the installments upon the capital of said gas company.

And, further answering, this defendant says he knows nothing of the

improvements alleged by complainants to have been put upon said lot, except from the allegations in their said bill of complaint, or the value thereof, or the length of time that they have held possession thereof, but this defendant denies the allegations in said bill that they held possession of said lot, or made valu'ble improvements thereon in good
41 faith, or that they are entitled to any pay for the same, because, he says, the instrument of writing attached to and made a part of the bill of complaint, marked "Exhibit A," shows upon its face that the said I. A. Paschal had no legal or equitable right, power, or authority to sell or convey said lot to said complainant Catherine Pollock, and because no one can be an innocent purchaser in good faith unless his vendor has a clear legal title upon its face, and the complainants have not alleged or shown, by exhibit or otherwise, that they rely upon a legal title, and because their alleged equitable title under which they claim shows upon its face that it does not contain the power to pass even an equitable right, title, or claim to the aforesaid lot or *or peice* of land.

And for further answer this defendant denies that the complainants, or either of them, have, or ever had, any legal or equitable right, title, or interest in or to the aforesaid lot or *peice* of land, or that they are legally or equitably entitled to any re*num*eration for any improvements that they have put upon said lot, because they had full notice,
42 both actual and constructive, that this defendant was the legal owner of said lot when they entered upon and took possession of said lot and made said improvements, if any, and because this defendant has no use for said improvements, and the same are valueless to this defendant; and this defendant denies that the improvements alleged to be made upon said lot are worth the sum of 6,250 dollars, or anything like said sum; and this defendant says that he is informed and believes, and from such information and belief alleges the fact to be, that the rent, use, and occupation of said lot from the 12th day of October, 1865, to the present time is worth the sum of dollars per month, which said sums the complainants are justly indebted, liable, and bound to pay this defendant, for which said sums this defendant prays for judgment against the complainants.

And this defendant, further answering, avers that he never did, at any time since the 12th day of October, 1865, in any manner, shape, or form, directly or indirectly, verbally or in writing, acquiesce in the possession or alleged title of the complainants to the lot or *peice* of
43 land in controversy, but always did and does claim the same as his own property; and he admits that he did institute an action on the law side of the circuit court of the United States for the western district of Texas, at Austin, to recover possession of the said real estate, and he further admits that he did at the June term, 1873, obtain and recover a judgment against the complainants herein named for the lot described in complainants' bill of complaint in said last-named court, on which said judgment a writ of possession was awarded him for the property in controversy against said complainants; and this defendant further avers that the said judgment was and is valid, subsisting, and binding judgment of a court of competent jurisdiction unreversed and unappealed from, and does and has fully settled all questions between the complainants and this defendant as to the property and rent of the real estate described in the bill of the complainants.

And, for further answer, the defendant denies each and every charge and allegation in the complainants' bill contained not herein ex-

44 pressly admitted, and asks that the complainants may be held to strict proof of the same.

And by way of cross-bill, this defendant alleges that the pretended title or claim set up by complainants to the lot described in their said bill casts a cloud upon the superior legal and equitable title of this defendant and depreciates the value thereof and prevents this defendant from selling the same for anything like its intrinsic value; therefore this defendant prays for judgment and decree annulling and setting aside the pretended title or claim of complainants and vesting the same in this defendant, and for all such orders, judgments, and decrees as the nature of the case may require to metes out equal justice between the parties.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently

45 answered, confessed, traversed and avoided or denied is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

ISAAC L. LYON.

CHANDLER, CARLETON and ROBERTSON,
Solicitors for Def't.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

Before me, John Graves, a commissioner of the circuit court of the United States for the eastern district of Michigan, came and personally appeared Isaac L. Lyon, a resident, to me known to be the person whose name is signed to the foregoing answer, and who being by me first duly sworn, deposes and says that all the facts alleged in the foregoing answer are true, so far as the same are stated of his own knowledge, and so far as stated on the information of others he believes them to be true.

46 In testimony whereof, I have hereto set my hand and affixed my seal of office at Detroit, this the 8th day of September, A. D. 1873.

[SEAL.]

JOHN GRAVES,
United States Commissioner for the Eastern District of Michigan.

EXHIBIT A.

THE STATE OF TEXAS,
County of Bexar:

Know all men by these presents that I, Isaac L. Lyon, of the said county of Bexar, & State of Texas, have made, constituted, and appointed, and do by these presents make, constitute, and appoint W. A. Bennett, of the county and State aforesaid, my true and lawful attorney in fact, to take charge of, possess and control all my property and estate of every sort, real, personal, and mixed, choses in action and assetts, and for me and in my name to hold and control, or sell, transfer

and convey the same to whomsoever and for what consideration soever, and upon whatever terms and manner he may deem fit and best for my interest, hereby authorizing my said attorney to collect and re-
47 ceipt for all debts, rents, and profits due or to become due to me, also to sell and convey by good and sufficient deeds in fee-simple any and all real estate I may and do own in the county aforesaid; also to collect the dividends, and vote in my stead, and in all respects represent me in my gas-light stock in the city of San Antonio, all matter pertaining to the management of the same, and to sell said stock and transfer the same upon the books of the company as required by their charter and by-laws, and to do and perform all the aforesaid acts and things, and to do all manner of acts and things touching my estate aforesaid that I could do in person.

And I hereby ratify and confirm and hold myself at all times bound to ratify and confirm all the acts and doings of said attorney, to be done and performed in the premises aforesaid, as fully and perfectly and to all intents and purposes as if done by me in my proper person.

In testimony whereof, I have hereunto subscribed my name this 22d day of May, 1861.

I. L. LYONS.

In presence of—
W'M P. M. MEANES.
W'M GROESBECK.

48 THE STATE OF TEXAS,
County of Bexar:

Personally appeared before me, Edward Miles, a notary public in and for said county, Henry M. Smith, to me well known, who, being by me duly sworn, says that W'm P. M. Meanes and W'm Groesbeck, whose names are signed as witnesses to a power of attorney given 22nd May, 1861, by I. L. Lyon to W. A. Bennett, and hereto attached, reside out of the State of Texas.

H. M. SMYTH.

Sworn to and subscribed before me this 18th day of March, A. D. 1867.

[L. S.] EDWARD MILES,
Notary Public, B. C.

THE STATE OF TEXAS,
County of Bexar:

Personally appeared before me, Edward Miles, a notary public in and for said county, John C. French and E. A. Florian, to me well known, who, being by me duly sworn, depose and say that they are disinterested witnesses in the matter of the power of attorney given 22nd May, 1861, by I. L. Lyon to W. A. Bennett, and hereto attached; that they are well acquainted with the handwriting of I. L. Lyon, who executed
49 the said instrument, and of W'm Groesbeck, one of the witnesses to the same, and recognize the name thereto signed to be the genuine signatures of the said I. L. Lyon and W'm Groesbeck.

JOHN C. FRENCH.
E. A. FLORIAN.

Sworn to and subscribed before me this 18 day of March, A. D. 1867.

[L. S.] EDWARD MILES,
Notary Public, B. C.

THE STATE OF TEXAS,
County of Bexar:

I, Peyton Smythe, county clerk of said county, do hereby certify that the foregoing instrument of writing, with its certificate of authentication, was filed for registration in my office the 21st day of March, 1867, at 5 o'clock p. m., and duly recorded the 22d day of March, 1867, at 10 o'clock a. m., in the records of said county, in Book U, No. 2, on page' 106 & 107. Witness my official seal and signature, at office in San Antonio, the day and year last above written.

[L. S.] PEYTON SMYTHE,
C. C. B. Co.

THE STATE OF TEXAS,
County of Bexar:

I, Mortimer Slocum, clerk of the district court of said county,
50 do hereby certify that the above and foregoing is a true and correct transcript of the original, as recorded among the records of said county, in Book U, No. 2, on page' No. 106 & 107.

Witness my official seal and signature, at office in San Antonio, this 17th day of July, A. D. 1873.

M. SLOCUM,
Clk D. C. B. Co.
By THEO. BALDUS,
Deputy.

Entry rules.

And afterwards, at November rules, the following entry appears:

FRANZ & KATHARINE POLLOCK, COMPL'TS, *vs.* ISAAC L. LYON, DEFENDANT. } No. 72, chancery. Nov. rules, Nov. 3d, 1873.

On this day came Walton, Green & Sleeper, sol's for complainant, and by consent file their replication to the answer of the def't, as of this day.

WALTON, GREEN & SLEEPER,
Solicitors.

Pro M. HOPKINS, *Clerk.*

Replication is endorsed to wit: "72 ch'y. In U. S. circuit, Austin. F. & K. Pollock vs. Isaac L. Lyon. Replication. Filed Nov. 3, 1873. M. Hopkins, cl'k." And is in words to wit:

51 *Replication.*

In U. S. circuit court for western district of Texas.

F. & K. POLLOCK *vs.* ISAAC L. LYON. } No. 72. In chancery.

The replication of F. & K. Pollock, plaintiffs, to the answer of Isaac L. Lyon, defendant.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said

answer, for replication thereunto, saith, that they will aver and prove their bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matters or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things these repliants are, and will be, ready to aver and prove, as this honorable court shall direct; and humbly prays, as in and by their said bill they hath already prayed.

WALTON & GREEN,
Solicitors for Repliants.

Continuance.

And afterwards, Feb. 5, 1874, the following entry appears:

F. & K. POLLOCK *vs.* ISAAC L. LYON. } No. 72. Chancery.

Ordered continued by the court.

52 And afterwards, to wit, the following entry appears upon the minutes of the court:

Submission of cause.

FRANZ & KATHARINE POLLOCK *vs.* ISAAC L. LYON. } 72. Chancery.

SATURDAY, *Feb.* 6, 1875.

Hon. W. B. Woods presiding.

On this day came the solicitors of complainant and the defendant, Waelder and Upson, solicitors of complainant, and W'm M. Walton & Chandler, Carleton and Robertson, solicitors for the defense, and the case was submitted to the court on the pleadings and evidence, and the case is held for consideration by the court.

And afterwards the following entry appears:

Decree.

MONDAY, *Feb.* 8*th*, 1875.

FRANZ POLLOCK & CATHARINE POLLOCK, COMPLAINANTS, *vs.* ISAAC L. LYON, DEFENDANT. } 72. Chancery.

In the circuit court of the United States, January term, anno Domini 1875, western district of Texas, at Austin.

At this term of the court this cause came on for final hearing on pleadings and proofs, and being argued by counsel and submitted to the court, it is therefore here and now ordered, adjudged, and decreed

by the court, as follows, viz: That the said defendant, Isaac L. Lyon, do, within sixty days from and after the enrollment of this decree,
53 by himself, or his legally constituted attorney in fact, make and deliver to the said complainant a good and sufficient deed, conveying in fee-simple to Catharine Pollock, one of the complainants, the following-described lots or parcels of land, situate in the city of San Antonio, in Bexar County, Texas, the same being mentioned in the bill, and by metes and bounds described as follows, viz:

Lots numbers nine and ten in block number one, in what is known as Beckville, in the city of San Antonio, bounded on the northeast by South street, on the southwest by an alley, on the southeast by Second street, and on the northwest by lot number eleven, each lot having a front of twenty varas on South street, and a depth of fifty varas; and it is further ordered, adjudged, and decreed by the court, that if the defendant, Isaac L. Lyon, shall fail so to execute and deliver the said deed as herein ordered, then that the clerk of this court, or his successor, in the event of the death or removal or resignation of the present incumbent, do proceed to execute the said conveyance to the said Catharine Pollock, and deliver the same to the said complainants; and it is further ordered, adjudged, and decreed by the court, that the complainants have the relief prayed for in the bill against the judgment at law, rendered in this court on the 6th day of June, 1873, in favor of the said de-
54 fendant, Isaac L. Lyon, and against the complainants, adjudging to him the lots of land hereinbefore described, and that the said Isaac L. Lyon be, and he is hereby, perpetually enjoined, either by himself, his attorneys, agents, or servants, from suing out, or prosecuting any writ of possession, upon the said judgment at law, to recover or obtain the possession of the said lots of land mentioned in this decree, and from setting up or asserting any claim or title to said premises against the said complainants, or any person claiming the same by, through, or under them.

It is further ordered that the defendant, Isaac L. Lyon, pay all costs in this behalf expended, to be taxed by the clerk of this court.

And thereupon the defendant gave notice of appeal, enrolled, signed, and sealed on this the 9th day of February, 1875.

[SEAL.] W. B. WOODS,
Judge.

55 PLAINTIFF'S EVIDENCE.

Deposition of Franz Pollock.

The deposition of Franz Pollock was filed endorsed, to wit:

To the clerk of the district court of the United States for the western district of Texas, Austin, Travis County, Texas:

Deposition of Franz Pollock.

FRANZ POLLOCK AND CATHERINE POLLOCK
vs.
ISAAC L. LYON. } No. 72.

Received this package from the hands of John Rosenheimer, notary public in and for the county of Bexar, State of Texas, the officer before

whom the enclosed deposition was taken, and this package is forwarded in due course of mail.

L. P. GAMBIA, *P. M.*

Filed January 14, 1874. Received from the P. office at Austin.
M. HOPKINS, *Clerk.*

Opened by order of court Jan'y 14, 1874.
M. HOPKINS, *Clerk.*

Opened by agreem't of council Jan'y 14, 1874.
WALTON & GREEN.
F. W. CHANDLER.

(Endorsed across the seal:) Jno. Rosenheimer, notary public, B. C.

And is in words to wit:
(Endorse' on back of deposition:)

FRANZ POLLOCK AND CATHERINE POLLOCK
vs.
ISAAC L. LYON.

Interrogatories to Fra'z Pollock.

56 Time, copy, and commission waived, and consent given that the answers may be taken & returned under State practice by any officer authorized by law to take depositions.
Dec. 19, 1873.
CHANDLER, CARLETON & ROBERTSON,
Sol's for Def't.

And in words, to wit:

FRANZ POLLOCK AND CATHERINE POLLOCK
vs.
ISAAC L. LYON. } In chancery.

Interrogatories to be administered to Fra'z Pollock, one of the complainants, and a witness in a certain cause now pending and at issue in the circuit court of the United States for the western district of Texas, wherein Franz Pollock and Catherine Pollock are complainants, and Isaac L. Lyon is defendant, on the part of said complainants.

Interrogatory 1st. Do you know the parties, complainants and defendant, in the title to these interrogatories named, or either and which of them, and how long have you known them respectively, or such of them as you do know? Declare the truth and your utmost knowledge, remembrance, and belief herein.

57 Int. 2. This cause was brought to perfect your title to the following-described two lots of land, situated in the city of San Antonio, in the county of Bexar, and State of Texas, being lots number nine and number ten, in block one, of what is known as "Beckville," an addition to said city, made by one Joseph H. Beck. State whether or not you are in possession of said lots. If yea, how long have you held possession thereof? What has been the character of your possession? Was it or not continuous, and was it open and notorious, or otherwise?

Int. 3. State when, why, and how you first took possession of said two lots. What, if any, claim did you have thereto?

Int. 4. If, in answer to the last foregoing interrogatory, you say that you bought said two lots, then state whether or not you paid the purchase money for the same; and, if yea, what was the amount of purchase money you paid therefor?

Int. 5. State whether or not you have made any improvements upon said two lots. If yea, when were such improvements made, and what is their character and present condition?

58 Int. 6. State what was the value of said two lots at the time you purchased the same; give the full market value.

Int. 7. Do you know any other matters or things touching the matters in issue in this cause which may tend to the benefit or advantage of either of the parties thereto? If yea, set forth the same and all the circumstances and particulars thereof fully and at large, according to the best of your knowledge, remembrance, and belief, as if you had been thereto particularly interrogated.

WALTON & GREEN,
WAELDER & UPSON,
Att'ys for Complainants.

FRANZ POLLOCK AND CATHERINE POLLOCK
vs.
ISAAC L. LYON. } In chancery.

Cross-interrogatories to be propounded to the plaintiff, Franz Pollock.

Cross-int'y 1st. If, in answer to the direct interrogatory, you have stated that you purchased the lots referred to of I. A. Paschal, did you ever enquire of Paschal, or W. A. Bennett, or any one else, where the defendant, Lyon, could be found? Did you ever try to find out

59 from the defendant, Lyon, whether or not he ratified the sale made by Paschal?

Cross-int'y 2nd. If, in answer to the 5th direct interrogatory, you have stated that you have made improvements on the lots referred to, please be particular and give the date or dates when you made such improvements on said lots, and state particularly what said improvements consist of; if in houses and outbuildings, please state the size of each building, the number of rooms in each building and their size, and what kind of material each building and each room was built of, and what kind of roofs are on them. If it is fenced in, state what kind of fence, the number of feet, and what it is built of, and give the date or dates when it was built. Please be particular and answer each question in the preceding and following interrogatories.

Cross-int'y 3d. What are the two lots worth now, without reference to any improvements that may have been put upon them since you claimed to own them?

Cross-int'y 4th. Do you believe in future rewards and punishments?

CHANDLER, CARLETON & ROBERTSON,
Atty's for Defendant.

60 Suit pending in the circuit court of the United States for the western district of Texas.

FRANZ POLLOCK AND CATHERINE POLLOCK
vs.
ISAAC L. LYON.

Answers and depositions of Franz Pollock, residing in the city of San Antonio, county of Bexar, State of Texas, to the accompanying interrogatories, propounded to him in the above-entitled cause, taken before John Rosenheimer, notary public in and for the county of Bexar, State of Texas, in accordance with the accompanying commission or agreement.

Answers of the witness, Franz Pollock.

To the 1st interrogatory he answers: The defendant I do not know, and have never known him. I know the complainants; one of them is myself and the other one is my wife, to whom I am married a little more than 12 years, and I was acquainted with her for about 6 months previous to my marriage with her.

To the 2nd interrogatory he answers: I am in possession of the said lots and have been in possession of them since A. D. 1865. In that year (1865) I bought these lots, and I immediately went to work
61 and had all the brush and chapparal cut down and removed. In the year 1867 or 1868 I built a house upon the said lots, and I have made other improvements upon the same. I made a garden, and planted fruit trees an' a shade tree upon said lot. When the house was finished I rented the whole premises (the lots and the improvements) for a short time—probably six months—to one Miller, who at that time was clerking for Quartermaster Lee. After that and during the year 1868 myself and family moved in ourselves, and we have lived in said improvements upon said lot ever since, and we have occupied and used and possessed the same continuously, openly, and notoriously, as our homestead, from the time myself and family moved in and first occupied the same, in 1868, up to this day, and are doing it yet.

To the 3rd interrogatory he answers: I did take possession of the said two lots first in 1865, by cutting and removing the brush and chapparal therefrom, because they were my property, having bought them and paid for them.

To the 4th interrogatory he answers: I paid the purchase-money
62 cash down at the time of the purchase of the said two lots. The amount of the purchase-money I paid for these two lots was four hundred and fifty dollars specie.

To the 5th interrogatory he answers: I have made improvements upon said lots. As already stated, in 1867 or 1868 I made the most improvements. They consist of a dwelling-house one story high, having a foundation of hard rocks, and above that the house is built of so*f* rock; there is a c'llar under part of the house; the house contains five rooms and has a shingle roof; a kitchen of soft rock, and adjoining the kitchen is a servant's room made of boards. A privy walled up with rock, a good well of hard rock, a stable made of boards, and fences part pailing and part cedar posts all around the two lots. And since then I have planted many trees, peach, fig, and mulberry trees, shade trees, and flower bushes, also pear trees; all of said improvements are in the best kind of condition, as I have taken great care of the same.

63 To the 6th interrogatory he answers: They *they* were worth

what I paid for them, 450\frac{00}{100}$, and no more. I paid the full value for these two lots.

To the 7th interrogatory he answers: I forgot to state that I had also a water-gate (for irrigating purposes) and three bridges made. I do not recollect anything else.

To the 1st cross-interrogatory he answers: I have never made any inquiries of any kind in regard to Lyons' whereabouts, nor as to his approving or ratifying the sale or not. I have never had any doubt about it. I relied upon what Paschal said at the time of the sale of the lots to me, and also upon what Freisleben said at the time. I have always considered that there could be no doubt or question about my title to these lots.

To the 2nd cross-interrogatory he answers: I have already answered this in full except the size of the rooms. In the dwelling-house are 2 rooms 14×16; another 2 are 10×11, and one is 10×13; the kitchen is 10×12, and the servant-room 12×13; the stable is 10×20. All the measures are inside; and I have also made a chicken-house
64 (heretofore omitted to mention) of boards 10×10 inside.

To the 3d cross-interrogatory he answers: I do not know.

To the 4th cross-interrogatory he answers: I do.

FRANZ POLLOCK.

Sworn to and subscribed before me this 10th January, A. D. 1874.

JNO. ROENHEIMER,
Notary Public, B. C.

THE STATE OF TEXAS,
County of Bexar:

I, John Rosenheimer, a notary public in and for the county and State aforesaid, do hereby certify that the foregoing answers of Franz Pollock, the witness before named, were made before me and were sworn to and subscribed before by the said witness.

In testimony whereof I hereunto sign my name, and affix the impress of my official seal at office in San Antonio, this 10th January, A. D. 1874.

[L. S.] JNO. ROSENHEIMER,
Notary Public, B. C.

Notary fee for taking depositions, $2.50, paid by pl'ff.

65 PL'FFS' TESTIMONY.

Deposition of G. Freisleben.

And afterwards, to wit, the deposition of G. Freisleben was filed on January 14, 1875. Endorsed on envelope, to wit:

To the clerk of the circuit court of the United States for the western district of Texas. Austin, Travis Co., Texas.

Deposition of G. Freisleben.

FRANZ POLLOCK AND CATHERINE POLLOCK
vs.
ISAAC L. LYON.

Received this package from the hands of Jno. Rosenheimer, notary public in and for Bexar County, State of Texas, the officer before whom

the enclosed depositions were taken, and this package is forwarded in due course of mail.

S. P. GAMBIA, *P. M.*

Rec'd from p. office at Austin, and filed January 14th, 1874.
M. HOPKINS, *Clerk.*

Opened by agreement of counsel January 17, 1874.
F. W. CHANDLER.
WALTON & GREEN.

(Endorsed across the seal:) Jno. Rosenheimer, notary public B. C.

And is in words, to wit:

(Endorsed:) No. 72. Franz Pollock and Catherine Pollock vs. Isaac L. Lyon. Interrogatories to G. Freisleben.

Time, copy, & commission waived, and consent given that the
66 answers may be taken & returned under State practice by any officer authorized by law to take depositions.

Dec. 19, 1873.

CHANDLER, CARLETON & ROBERTSON,
Sol's for Def't.

And in words, to wit:

FRANZ POLLOCK AND CATHERINE POLLOCK
vs.
ISAAC L. LYON. } In chancery.

Interrogatories to be administered to G. Freisleben, a witness in a certain cause now pending and at issue in the circuit court of the United States for the western district of Texas, wherein Franz Pollock and Catherine Pollock are complainants and Isaac L. Lyon is defendant, on the part of said complainants.

Interrogatory 1. Do you know the parties, complainants and defendant, in the title to these interrogatories named, or either and which of them, and how long have you known them respectively, or such of them as you do know? Declare the truth and your utmost knowledge, remembrance, and belief herein.

Int. 2. Have you or not held, and do you or not now hold any
67 official position in the city of San Antonio, Texas? If yea, state what official position you have held and now hold in said city, and how long you have held the same; state also, whether your official duties enable you to see different and all parts of the city frequently, and also enable you to judge of the value of real estate in said city, as well as the improvements made and going on therein.

Int. 3. State what your occupation or profession is, aside from any official position you may have held or hold, and how long you have been engaged in such occupation or profession and where.

Int. 4. Do you or not know the two lots of ground in controversy in this cause, being lots Nos. 9 and 10, in block 1, in what is known as "Beckville," an addition made to the said city of San Antonio by one Joseph H. Beck? If yea, state in whose actual possession said two lots have been since the year 1865; who has occupied them since about the month of October, 1865; what was the character of such occupation? State whether or not it was open and notorious or otherwise, and under

what claim of right, if any, the party or parties in possession
68 occupied the same since that time. Declare the truth and your utmost knowledge, remembrance, and belief herein.

Int. 5. Do you or not know how and from whom and in what manner the party or parties occupying the lots aforesaid acquired the same or possession of the same? If yea, then state whether by purchase or otherwise; and if by purchase, what was the consideration or purchase-money they paid for the same, to whom it was paid, and in what capacity the person making the sale was acting, and what was the value of said lots at the time of such purchase? State all you know as to the matters in this interrogatory inquired of, together with your means of information.

Int. 6. If you say, in answer to the foregoing interrogatories, that the complainants in this cause have occupied said two lots since 1865, and that they have purchased the same, you will then state whether or not they have made improvements upon said lots. If yea, state the time when such improvements were made, their character and value
69 at the time they were made. their present value, as well as their value on or about the 10th day of March, 1873.

Int. 7. Do you known any other matters or things touching the matters in issue in this cause which may tend to the benefit or advantage of the said complainants therein, and all the circumstances and particulars thereof, fully and at large, according to the best of your knowledge, remembrance, and belief, as if you had been thereto particularly interrogated.

WALTON & GREEN,
WAELDER & UPSON,
Att'ys for Complainants.

FRANZ POLLOCK AND CATHERINE POLLOCK
vs.
ISAAC L. LYON.
} In chancery.

Cross-interrogatories to be propounded to the witness G. Friesleben

The defendant objects and excepts to each and every question in the 5th direct interrogatory and the answers thereto, because the same are illegal, irrelevant, and inadmissible in evidence in this cause for reasons apparent in every question.

70 Cross-int'y 1st to said witnesses. If, in answer to the 6th direct interrogatory, you have stated that the complainants have made improvements upon the lots referred to, please be particular and give the date when each piece or part of said improvements were made. What is the present value of the lots without the improvements made by plaintiffs compared with the market value of such lots in the vicinity where the lots are situated.

Cross-int'y 2nd. Do you believe in future rewards and punishment?

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Defendants.

Suit pending in the circuit court of the United States for the western district of Texas.

FRANZ POLLOCK AND CATHERINE POLLOCK
vs.
ISAAC L. LYON.

Answers and depositions of G. Friesleben, residing in the city of San Antonio, county of Bexar, State of Texas, to the accompanying interrogatories propounded to him in the above entitled cause taken before John Rosenheimer, notary public in and for the county of Bexar, State of Texas, in accordance with the accompanying commission or agreement.

71 Answers of the witness G. Freisleben.

To the 1st interrogatory he answers. I knew complainants since the year 1856; the defendant I knew in 1854, 1860, and 1861.

To the 2nd interrogatory he answers. I hold the position of city surveyor and engineer of the city of San Antonio. I have held that official position from 1855 to 1869 and from November, 1872, to the present time. My official duties bring me in daily intercourse with the different parts of the city, and enable me to form a correct judgment of the value of real estate and improvements.

To the 3d interrogatory he answers. My profession is surveyor and engineer, in which profession I have been engaged in San Antonio since A. D. 1852.

To the 4th interrogatory he answers. I do not know the said lots Nos. 9 and 10 in block No. 1, in what is known as "Beckville." These lots have been in actual, open, and notorious possession of Catherine and Franz Pollock since November, 1865. It is their homestead, and they live upon and occupy said lots. In 1865 (November) I surveyed these two lots for said Pollock & wife, who had bought these lots in October, 1865.

72 To the 5th interrogatory he answers. The said Franz Pollock and wife bought these two lots from Isaac L. Lyon, he acting by and through his attorney in fact, I. A. Paschal, for about $440.00, which was the full value of these lots. The purchase-money was paid to said Pollock, who used the same in the payment of debts of said Lyon, who himself at the time was in Mexico. Lyon authorized Paschal to sell the lots and to pay his debts with the proceeds of the sale. I assisted Paschal in the sale of the lots. Judge Paschal at the time informed me of all the circumstances, and he afterwards told me also that Lyon had approved the sale.

To the 6th interrogatory he answers. Complainants did make improvements upon said two lots. They were mostly made in 1867 and 1868, and consist of a large substantial rock dwelling-house, with gallery, outhouses, fences, and a well. At the time these improvements were made their value was $6,000.00, their present value is $6,000.00, and on or about the 10th day of March, 1873, their value was $6,000.00.

To the 7th interrogatory he answers. I do not.

73 To 1st cross-interrogatory he answers. The improvements were made in 1867, and were finished in the spring of 1868. The present value of the two lots, without improvements, is about $600.00.

To the 2nd cross-interrogatory he answers. I do not.

G. FREISLEBEN.

Sworn and subscribed before me this 12th January, A. D. 1874.

JNO. ROSENHEIMER,
Notary Public, B. C.

STATE OF TEXAS,
County of Bexar:

I, John Rosenheimer, notary public in and for the county of Bexar, State of Texas, do hereby certify that the foregoing answers of G. Freisleben, the witness before named, were made before me, and sworn to and subscribed before me by the said witness.

Given under my hand and official seal this the 12 day of January, A. D. 1874.

[L. S.]

JNO. ROSENHEIMER,
Notary Public, B. C.

Notary fee for taking the depositions, $2.00, paid by complainants.

74 PLAINTIFFS' TESTIMONY.

Deposition of J. H. Kampmann.

And afterwards, to wit, the depositions of J. H. Kampmann was filed, endorsed on envelope, to wit:

To the clerk of the circuit court of the United States for the western district of Texas, Austin, Travis County, Texas.

Deposition of J. H. Kampmann.

FRANZ POLLOCK AND CATHERINE POLLOCK
vs.
ISAAC L. LYON. } No. 72. Ch'y.

Received this package from the hands of John Rosenheimer, a notary public of Bexar County, the officer before whom the enclosed depositions were taken, and this package is forwarded in due course of mail.

San Antonio, Texas, January 14, '74.

S. P. GAMBIA, *Postmaster.*
Per W'M J. DUGAD, *1st Ass't.*

Rec'd from P. office at Austin, and filed January 16, 1874.

M. HOPKINS, *Clerk.*

Opened by agreement of counsel January 17, 1874.

F. W. CHANDLER,
WALTON AND GREEN.

(Endorsed across the seal:) John Rosenheimer, notary public, B. C.

And the interrogatories are endorsed, to wit:

FRANZ POLLOCK AND CATHERINE POLLOCK
vs.
ISAAC L. LYON. } No.

Interrogatories to J. H. Kampmann and Ignaz Faska.

Time, copy & commission waived and consent given that the

75 answers may be taken, &c., and returned under State practice by any officer authorized by law to take depositions.

Dec'r 19, 1873.

CHANDLER, CARLETON & ROBERTSON.

And is in words, to wit:

FRANZ POLLOCK AND CATHERINE POLLOCK
vs.
ISAAC L. LYON. } In chancery.

Interrogatories to be administered to J. H. Kampmann and Ignaz Faska, witnesses in a certain cause now pending and at issue in the circuit court of the United States for the western district of Texas, wherein Franz Pollock and Catherine Pollock are complainants and Isaac L. Lyon is defendant, on the party of said complainants.

Interrogatory 1st. Do you know the parties complainants and defendant in the title to these interrogatories named, or either, and which of them, and how long have you known them respectively, or such of them as you do know? Declare the truth and your utmost knowledge, remembrance, and belief herein?

Int. 2. Do you or not follow any business, occupation, or profession? If yea, state how long you have been engaged in such busi-
76 ness, occupation, or profession; whether you have been engaged therein in the city of San Antonio, in Texas, and how long?

Int. 3. Do you or not know the two lots of land in controversy in this cause, being lots number nine and number ten in block one, in what is known as "Beckville," in the city of San Antonio, being an addition to said city made by Joseph H. Beck? If yea, state in whose actual possession said two lots have been since the year 1865; what was their value? Who has occupied them since about the month of October, 1865? What was the character of such occupation as to its being open and notorious, or otherwise?

Int. 4. If you say, in answer to the foregoing interrogatory, that the complainants have been in possession of said two lots, you will then, after having stated the length and character of their possession, state also whether or not the said complainants have made any improvements upon the same? If yea, when were such improvements made, what are they, and what is their present value? What was their
77 value when made, and what was their value on or about the 10th day of March, 1873? State also what such improvements consisted of on said last-mentioned day, and what they consist of now? Set forth all the circumstances and particulars thereof, fully and at large, according to the best of your knowledge, remembrance, and belief?

Int. 5. Do you, or either of you, know any other matters or things touching the matters in issue in this cause, which may tend to the benefit or advantage of the said complainants therein? If yea, set forth the same, and all the circumstances and particulars thereof, fully and at large, according to the best of your knowledge, remembrance, and belief, as if you had been thereto particularly interrogated.

WAELDER AND UPSON,
WALTON AND GREEN,
Atty's for Complainants.

FRANZ POLLOCK AND CATHERINE POLLOCK } In chancery.
vs.
ISAAC L. LYON. }

Cross-interrogatories to be propounded to the witnesses, J. H. Kampmann and Ignaz Faska.

Cross-int'y 1st to both of said witnesses. If, in answer to
78 the direct interrogatories, you have stated that the plaintiffs have made improvements upon the two lots referred to, please be particular and state the date or different dates when said improvements were made by plaintiffs, and then be particular to describe each improvement, if it is in a house or houses, either dwelling or out-houses; please state the size of each house and the rooms in each, and when and how they are finished, and what each building was built of, and what kind of roofs are on each building? If the plaintiffs have built a fence or fences on said lots; please state the number of feet, and what it is built of, and what each part of said fence was built ? We know you are a mechanic, for that reason we ask you to be kind enough to examine the improvements critically before you answer these interrogatories, so that you can describe each house and room, and the character and value of the same. Please state their present value.

Cross-int'y 2nd. Please state the present value of the lots, without improvements. You must be a good judge of property in the vicinity
79 of said lots, of their present value; not what they would bring at forced sales, but a fair value for them, as compared with the generally estimated value of said lots where they are situated.

CHANDLER, CARLETON AND ROBERTSON,
Att'ys for Defendant.

Suit pending in the circuit court of the United States for the western district of Texas.

FRANZ POLLOCK AND CATHERINE POLLOCK } No. —.
vs.
ISAAC L. LYON. }

Answers and depositions of J. H. Kampmann, residing in the city of San Antonio, county of Bexar, State of Texas, to the accompanying interrogatories, propounded to him in the above-entitled cause, taken before John Rosenheimer, notary public in and for the county of Bexar, State of Texas, in accordance with the accompanying commission or agreement.

Answers of the witness, J. H. Kampmann.

To the 1st interrogatory he answers. I know the parties, complainants and defendants, in this case. I have known the complainants
1864, and the defendant I knew while he lived here from 1859 to 1861.

To the 2nd interrogatory he answers. My business is that of an architect and builder. I studdied architecture, and learned the business of
80 a mason in Europe, and followed it there for 15 years. I have been engaged in building in San Antonio since 1849, and am now so engaged.

To the 3rd interrogatory he answers. I know the lots named in this interro atory. They are situated in what is known as Beckville, an ad-

dition to the city of San Antonio, made by Joseph H. Beck in or about the year 1852. Franz Pollock has been in possession of the lots for a number of years—more than five years—occupying them as a homestead with his family. The full market value of the lots in 1865 was from 175.00 to $200.00 each. Pollock and family have occupied the lots constantly as a homestead since they first went into possession, the exact time of which I cannot state. They occupied the place as a homestead, and their occupation was open and notorious.

To the 4th interrogatory he answers. The complainants have made improvements upon the lots. They consist of a good store, dwelling-house, out-houses, and fences. Most or all of the improvements were made as soon as they took possession of the lots. There may have been some additions afterwards, though nothing has been added dur-
81 ing the last 2 or 3 years. The value of the improvements is, in my judgment, $6,200.00. They were worth that much when made, and they are worth that much now, and had the same value on or about the 10th of March, 1873. They consist, as I have stated, of a stone dwelling-house, out-houses, and fences. The dwelling-house is a good, commodious house, containing 5 rooms and a gallery. The out-houses consist of a kitchen, servants' room, stable, water-closet, &c., and the fences are made with pailing and boards, with cedar posts. The improvements are worth as much now as they were when made, for the reason that lumber and labor are higher now than they were at that time.

To the 5th interrogatory he answers. I am not aware that I could state anything further touching the matters in issue which would benefit either the complainants or the defendant.

To the 1st cross-interrogatory he answers. I am unable to state the exact dates when the improvements were made. The dwelling-house is a double house, built of stone, and contains five rooms and gal-
82 lery. The walls are plastered inside. Its roof, as well as the roofs of the out-houses, is covered with shingles. There are a kitchen, servants' room, stable, water-closet, *as* out-houses. The dwelling is built of rock, the kitchen and servants' room of rock and lumber. I do not know the number of feet of the fences. Two sides of the fence are made of pailing, and the two other sides of cedar posts and boards. I am well acquainted with the improvements, though I cannot state the sizes of the rooms. Their present value is $6,200.00, according to my judgment, as I have already stated.

To the 2nd cross-interrogatory he answers: A fair valuation of the lots at the time, without improvements, would, in my opinion, be about $300.00 each, as compared with the value of lots in the same neighborhood.

J. H. KAMPMANN.

Sworn to and subscribed before me this 13th day of January, A. D. 1874.

JNO. ROSENHEIMER,
Notary Public, B. C.

STATE OF TEXAS,
County of Bexar:

I, John Rosenheimer, notary public in and for the county of
83 Bexar and State of Texas, do hereby certify that the foregoing answers of J. H. Kampmann, the witness before named, were made before me, and were sworn to and subscribed before me by the said witness.

Given under my hand and official seal, at office in San Antonio, this 13th day of January, A. D. 1874.

JNO. ROSENHEIMER,
Notary Public, B. C.

Notary fees for taking depositions $2.00, paid by complainants.

DEFENDANT'S TESTIMONY.

Deposition of A. Earhart & W'm H. Young.

And afterwards, to wit, on January 29th, 1874, the depositions of A. Earhart and W'm H. Young was filed, endorsed on envelope, to wit:

To the clerk of the circuit court of the U. S., west. dist. of Texas, city of Austin, Travis County, Texas:

Suit pending in U. S. circuit court for west. dist. of Texas, at Austin, in chancery.

FRANZ POLLOCK AND CATHERINE POLLOCK
vs.
ISAAC L. LYON. } No.

Depositions of A. Earhart and W'm H. Young.

Received this package from the hands of Sam. S. Smith, dist.
84 clerk of Bexar County, the officer before whom these depositions were taken.

S. B. GAMBIA,
P. M., San Antonio.

January 27th, 1874.

Rec'd from p.-office at Austin & filed January 29, 1874.

M. HOPKINS, *Clerk.*

Opened by agreement January 29, 1874.

M. HOPKINS, *Clk.*

Clerk's fee, $10.00; postage, 15c., paid by L. T. Portis.
(Endorsed across the seal:) Sam. S. Smith, cl'k D. C. Bexar Co.

And the interrogatories are endorsed to wit:

Interrogatories to W'm H. Young and A. Earhart.

FRANZ POLLOCK AND CATHERINE POLLOCK
vs.
ISAAC L. LYON.

And in words to wit:

FRANZ POLLOCK AND CATHERINE POLLOCK
vs.
ISAAC L. LYON. } In chancery.

Interrogatories to be propounded to W'm H. Young and A. Earhart, resident citizens of San Antonio, Bexar County, Texas, material witnesses for defendant in a certain cause now pending and at issue in

the circuit court of the United States for the western district
85 of Texas, wherein Franz Pollock and Catherine Pollock are complainants and Isaac L. Lyon is defendant, on the part of said defendant.

Int'y 1st. To each and all of the witnesses above named: Do you know the parties complainants and defendants in the title to these interrogatories named, or either and which of them, and how long have you known them, respectively, or such of them as you do know? Declare the truth and your utmost knowledge, remembrance, and belief herein.

Int'y 2nd. To each of said witnesses: Where do you reside, and how long have you resided there? What has been and what is your occupation since you have lived in San Antonio, Texas?

Int'y 3d. To each and all of said witnesses: This bill is filed to recover title or to establish the value of certain improvements alleged to be on a certain lot or piece of land in said city of San Antonio, Texas, described as follows, to wit: "Two certain lots, being known as lots No. nine and ten (9 & 10), in block number one (1), of what is known as Beckville, in the city of San Antonio, being an addition made to the said city of San Antonio by one Joseph H. Beck, in the year 1852,
86 out of the Baron de Bastrop labor, and a plat of which said Beckville, made by one W'm Scott Smythe, is now of record in the office of the city surveyor of San Antonio." State whether or not you know the above-described property; if yea, how long have you known said property?

Int'y 4th. To each and all of said witnesses: State whether or not there has been any improvements put upon said property since April, 1866. If yea, will you please state what the improvements consist of, and give the date when each piece of improvements was made, and when they were put there? Give the size of each room and building put upon said lot since 1866, and the character of finish outside and inside of each of said rooms, and state the material that each house or room is built of upon said lot since April, 1866, and what it would cost to put such improvements as above referred to upon said lot. If you are not sufficiently acquainted with the exact character of such improvements, will you please call upon M'r and M'r's Pollock and ask them to allow you to inspect said improvements before you answer these interroga-
87 tories, so that you may answer more accurately? And if they refuse to allow you to inspect said improvements, please state what reason they give for it, and their language in their refusal, if they should do so.

Int'y 5th. Please state the present value of such improvements as may have been made on said lot since April, 1866, if any. And state as near as you can the date when said improvements were put there; and state the present condition they are in and the repairs upon said lot. Are they in a good or bad condition, including the fencing around said lot, if any, and the present value of the fence around it, if any?

Int'y 6th. What is or would be a fair rent for the lot and improvements from April, 1866, to the present time, comparing it with the usual rents for such property in that part of the city of San Antonio?

Int'y 7th. What is the present value of the lot without reference to the improvements put thereon by complainants, to compare it with
88 the reputed value of other lots in the same vicinity? Please state fully.

Int'y 8th. Do you know any other matters or things touching the matters in issue in this cause which may tend to the benefit or advantage of the said defendant therein? If yea, set forth the same and all the

circumstances and particulars thereof fully and at large, according to the best of your knowledge, remembrance, and belief, as if you had been thereto particularly interrogated.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Defendant.

We, the counsel and solicitors of the complainants in case No. , chancery, in U. S. circuit court, western district of Texas, of Franz and Catherine Pollock against Isaac L. Lyon, hereby waive service, time, copy, and commission of and on the foregoing interrogatories, and agree that the same may be answered instanter before any officer authorized in Texas to take depositions, and that the answers, when taken, may be read in evidence on the trial of said cause, free of objection as to formality of taking and returning, but subject to all legal objections
89 as to their admissibility, legality, or the competency of the testimony.

This agreement is made to avoid the making of useless cost.

WAELDER & UPSON,
WALTON & GREEN,
For Comp'ts.

X-int's:

1. What are your relations with the def't, Lyons, & what also with the complainants?
2. How long have you known the property described; what, if anything, called your attention before or in or since 1866 to the property or to the improvements; when did you first make note of the property; when did you first examine the improvements, and what was your object or purpose in noting the property & making examination of the improvements; at whose instance did you do the acts named?
3. What is your occupation?
4. Are you a builder, architect, or real-estate agent?
5. Of what material are the improvements erected?
6. Who informed you as to the cost of the improvements or the value of the lots; who informed you as to the value of the rents?
90 7. What is the rent of the ground worth without any improvements?
8. Give exact, just, fair, and reasonable answer to all questions.
9. What, or about, did the improvements cost?

WAELDER & UPSON,
WALTON & GREEN,
For Comp'ts.

FRANZ POLLOCK AND CATHERINE POLLOCK
vs.
ISAAC L. LYON. } No. In chancery.

I, Sam. S. Smith, clerk of the district court of Bexar County, by virtue of an agreement made between the parties in a suit pending in the circuit court of the United States for the western district of Texas, wherein Franz & Catherine Pollock are plaintiffs and Isaac L. Lyon is defendant, have caused the witnesses, A. Earhart and W'm H. Young, named in the interrogatories hereto attached, to appear before me, and having been duly sworn, true answers to make to said interrogatories, the witness, A. Earhart, in answer to int. 1st, says:

I know the parties plaintiff; I do not know the defendant, I. S. Lyon.
I have known the plaintiffs for about seven years. The above is
91 my utmost knowledge, remembrance, and belief.

Int'y 2. I reside in San Antonio, Bexar County, Texas; I have resided there for some eight or nine years; my occupation is that of an architect & builder.

Int. 3rd. I have known the property described in this interrogatory for about seven years.

Int. 4th. There has been an improvement of a one-story house put upon said lot since April, 1866. There has been improvements consisting of one house, containing five rooms and a gallery, the whole length of the front, which is 36 feet and a half long and nine feet wide inside; the two front rooms are 17 by 16 feet, two back rooms ten feet square, and one room ten by thirteen feet, and a cellar under one of the rooms. The building is composed of soft and hard rock, about half hard and half soft rock. The building is plastered throughout, both inside and out, and in all particulars is a well-finished building. There is another building outside 25 feet by 12 feet, built half of rock and half of lumber,
with gallery on one side six feet in width; there are two small
92 out-houses and well of water, rocked up and nicely finished; there is two hundred and forty running feet of good well-finished pailing fence and about an equal quantity of cedar-picket fence. The land is well cultivated and all the premises are in excellent condition. I have personally examined the premises. I cannot state the exact dates when the improvements were made, but know they have all been placed there since April, 1866.

Int. 5th. I estimate the value of the improvements on said lot at not less than five thousand dollars ($5,000), and they may have cost considerably more. The rest of this interrogatory I have answered in my answer to the 4th interrogatory.

Int. 6th. I believe the property would a monthly rent of about $30.00 in its present condition.

Int. 7th. These lots are worth about $400.00 each.

Int. 8th. I know nothing further.

A. EARHART.

Subscribed and sworn to before me this 26 day of January, 1874, by said witness, A. Earhart.

SAM'L S. SMITH,
Clk D. C. B. Co.

The witness, A. Earhart, in answer to cross-interrogatories, says to—

X-int. 1st. I have no relations with any of the parties whatever;
93 I am merely acquainted with Pollock and his wife.

X-int. 2nd. The first time I made note of these improvements was when they were in course of errection, I being in that business, and building at the time in the neighborhood. I first examined the improvements on the 24th of this present month by the suggestion of the clerk of the dist. court of this county to enable me to answer these interrogatories specified.

X-int. 3. Builder and architect.

X-int. 4. Answered above.

X-int. 5. This is answered fully in answer to direct int. 4th.

X-int. 6. My own personal knowledge of the matter above informed me as to both facts.

X-int. 7th. The lot would not have any value without the improvements.

X-int. 8th. I have done so.

X-int 9th. Stated in answer to direct int. 5th.

A. EARHART.

Sworn to and subscribed before me by said witness, A. Earhart, this 26th day of January, A. D. 1874.

SAM'L S. SMITH,
Clk D. C. B. Co.

94 And the witness, W'm H. Young says in answer to—

Int. 1st. I am not acquainted with any of the parties named further than that I saw on the premises this day a person who informed me she was M'r's Pollock.

Int. 2d. I reside in San Antonio, and have resided in said city since August, A. D. 1865; since July 1st, 1866, my occupation has been that of an attorney at law, and since about the 1st of January, 1871, in connection with H. F. Young, I have been conducting what we call a law and land office, making a specialty of land matters in the practice of my profession.

Int. 3rd. I am familiar with section of the city in which the described property is situated (having lived for about a year quite near thereto), and have often passed by and seen the said property, but do not recollect that I ever was on the premises or knew who owned and occupied the same until to-day, when I visited the same in obedience to the request contained in these interrogatories, and was shown the property by
95 M'r's Pollock. It was in the latter part of 1865, and the first part of 1866, that I lived in that vicinity.

Int. 4th. My recollection is that the lots named were entirely unimproved in April, 1866, but I have no certain knowledge of the time at which the improvements or the different parts thereof were put upon the ground. The' is a neat, good paling fence enclosing the N.E. side and about ½ of the S.E. side, and a good cedar picket fence the other half of the S.E. side, and the whole of the S.W. side of said lots there is a sort of patched up fence; on the N.W. side there is a dwelling house built of hard rock for the foundation and soft rock above, with good shingle roof and good plank floors, plastered within and without, the whole well and substantially but not finely finished; there is a gallery with railing across the entire front, which consists of two rooms, I should judge (I had not the means to procure exact measurement) about 16 f't square; the rear of the dwelling is divided into 3 rooms about 10
96 f't square; a short distance back of the dwelling are two small rooms under one shingle roof, with floorless gallery; on one side the rooms are floored, one with hewn rocks, the other with plank, one room is built of rock *rock*, the other of plank in California style. There is also a small stable built of plank, shingle roof, with shed on one side and a neat, well built privy, and a good well, walled up and well finished; the N.E. half of the two lots is occupied by the dwelling and kitchen, the other half is cultivated as a garden. The premises are divided in two by a picket fence. I think it would cost from four thousand five hundred to five thousand dollars to put the entire improvements complete upon the ground.

I should estimate the present value of the entire improvements at from three thousand five hundred to four thousand dollars, as they have been kept in a very fair state of preservation and repair, both buildings

and fences. I think the improvements were put there about four years ago, or it may be five. The fencing on the premises, I should say, is worth from three hundred to three hundred & fifty dollars.

97 Int. 6th. I should say that twenty-five dollars per month would be a fair average rent for the place as now improved since April, 1866.

Int. 7th. I think the piece of ground comprised by the two lots, without improvements of any sort, would be worth about nine hundred dollars in gold.

Int. 8th. I know nothing further.

W'M H. YOUNG.

Sworn to and subscribed before me by said witness, W'm H. Young, this 26 day of January, 1874.

SAM. S. SMITH,
Cl'k D. C. B. Co.

X-int. 1st. I have no relation of any kind with either party.

X-int. 2nd. I think I have answered this mainly in answer to 3rd int. I will state, further, that the dist. clerk handed me the interrogatories, which, when I had read, I remarked that I knew nothing of the premises. He said, "You are requested to visit and inspect them." This was in the court-room, and a few minutes afterwards Gen'l D. Y. Portis, attorney, asked me if such interrogatories had been handed me; and

98 on my replying in the affirmative, requested that I go and examine the premises in order that I might be prepared to answer.

X-int. 3rd. I have answered this in answer to 2nd int.

X-int. 4th. I might be called a real-estate agent, as that is the business of my firm.

X-int. 5th. Answered in answer to 4th int.

X-int. 6th. I have stated cost of improvements and rents upon my own judgment; also value of the lots.

X-int. 7. I should say that without any improvements the rent of the ground would be worth nothing.

X-int. 8th. Have done so to the best of my judgment and ability.

X-int. 9th. I think about four thousand five hundred to five thousand dollars.

W'M H. YOUNG.

Sworn to and subscribed before me this 26th day of January, A. D. 1874, by said witness, W'm H. Young.

SAM. S. SMITH,
Cl'k D. C. B. Co.

THE STATE OF TEXAS,
County of Bexar:

I, Sam. S. Smith, clerk of the district court of said county, do hereby certify that the facts by me before stated are true; that the foregoing answers to the attached interrogatories and cross-interrogatories were by the said witnesses, A. Earhart and W'm H. Young, respectively, subscribed and sworn to before me.

In testimony whereof I have hereunto subscribed my name officially and affixed the impress of the seal of said district court, at office in San Antonio, this 26 day of January, A. D. 1874.

[L. S.]

SAM. S. SMITH,
Cl'k Dist. C'rt Bex. Co.

99 *Deed of Gregorio Sota and Teresa Seguin de Sota to Isaac L. Lyon.*

Deed endorsed to wit:

Gregorio Sota & Teresa Sequin de Soto to Isaac L. Lyon. Deed. No. 331. R. No. 1. Ent'd.

Filed in my office for registration this ninth day of April, A. D. 1859, at 4½ o'clock p. m.

SAM. S. SMITH,
Clerk Co. Court, Bexar Co.,
By EDWARD MILES,
Dep'y.

Recorder's fees, $1.50; notary's " $2.00—$3.50.

Which is in words as follows:

Know all men by these presents that we, Gregorio Soto and Teresa Seguin de Soto, his wife, of the county of Bexar and State of Texas, for and in consideration of six hundred dollars and cents, to us paid by Isaac L. Lyon, have this day sold unto the said Isaac L. Lyon, of the county of Bexar and State of Texas, the following-described property, to wit:

A certain lot in the city of San Antonio, west of the San Pedro Creek, fronting on Laredo street forty-eight (48 v's) varas, more or less,
100 on said Laredo street, and running back to the San Pedro Creek, bounded as follows: North, by continuation of Rinas street; south, cr. property of F. Guilbeau; east, by the San Pedro Creek, and west by Laredo street; the said property herein conveyed being the same formerly belonging to Crasmo Seguin, d'c'd, and inherited by his only two surviving heirs, John N. Seguin and Ma. Leonardo Seguin de Flores, and conveyed by them to me, Teresa Seguin de Sota, by deeds bearing dates, respectively, of February 18th, 1858, and September 6th, 1858, and duly recorded in the county court of Bexar County, to which deeds reference is made for a more full description of the property herein conveyed, together with all the rights and appurtenances thereunto belonging, or in anywise incident or appertaining; to have and to hold the above-described property unto Isaac L. Lyon, heirs, assigns, or legal representatives, forever.

And we do hereby warrant and will forever defend the title to the same against every person whomsoever lawfully claiming or to claim the same or any part thereof.

In testimony whereof we hereunto sign our names, at the city of San Antonio, this ninth day of April, A. D. 1859.

GREGORIO SOTO.
TERESA SEGUIN DE SOTO.

Witness:
EDWARD MILES.

101 THE STATE OF TEXAS,
County of Bexar:

Before me, Sam. S. Smith, clerk of the county court in and for said county of Bexar, duly commissioned and qualified, this day personally appeared Gregorio Soto, to me well known, who in my presence acknowledged that he had signed the foregoing instrument of writing, and declared the same to be his act and deed for the purposes and considerations therein set forth.

To certify which I hereunto sign my name and affix the impress of my official seal, at my office in the city of San Antonio this ninth day of April, 1859.

[L. S.]

SAM. S. SMITH,
Clk C. C. B. Co.,
By EDWARD MILES,
Dep'y.

THE STATE OF TEXAS,
County of Bexar:

Before me, Sam. S. Smith, clerk of the county court of said county, personally appeared Teresa Seguin de Soto, wife of Gregorio Soto, parties to a certain deed or writing bearing date on the ninth day of April, A. D. 1859, and hereto annexed, and having been examined by
102 me privily and apart from her husband, and having the same fully explained to her, she, the said Teresa Seguin de Soto, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

To certify which I hereto sign my name and affix my seal of office, at San Antonio, this ninth day of April, 1859.

[L. S.]

SAM. S. SMITH,
Clk C. C. B. Co.,
By EDWARD MILES,
Dep'y.

THE STATE OF TEXAS,
County of Bexar:

I, Sam. S. Smith, clerk of the county court of said county, do hereby certify that the instrument of writing hereto attached, with its certificate of authentication, was filed for registration in my office the 9th day of April, A. D. 1859, at 4½ o'clock p. m., and duly recorded the 15th day of November, A. D. 1859, at 12½ o'clock p. m., in the records of said county, in Book R., No. 1, on pages Nos. 322 & 324.

Witness my hand and the seal of the county court of said county, at office in San Antonio, the day and year last above written.

[L. S.]

SAM. S. SMITH,
Clerk County Court, Bexar County.

103 And afterwards, to wit, on June 6, 1873, the following deed was filed, endorsed on face, to wit:

Lino Arocha & wife to Isaac Lyon. Deed. No. 500. Ent'd Book S, No. 1.

Filed in my office for registration this 18th day of August, A. D. 1860, at 8 o'clock a. m.

SAM. S. SMITH,
Clerk Co. Court, B. Co.

Recorder's fees, $1.50; notary's, .

M. HOPKINS, *Clerk.*

Filed June 6th, 1873.

Endorsed, to wit, on back side of said deed:

No. 1300.

We, the jury, find for the plaintiff the premises in controversy, and assess the damages at one cent.

JOHN S. NAPIER,
Foreman.

Filed June 6th, 1873.

M. HOPKINS, *Clerk.*

And is in words, to wit:

THE STATE OF TEXAS,
County of Bexar:

Know all men by these presents, that we, Lino Arocha and wife, Encarnacion Urrutia, of the county of Bexar and State of Texas, for and in consideration of the sum of twelve hundred dollars to us in hand paid by Isaac L. Lyon, of the county of Bexar and State of Texas, the
104 receipt whereof is hereby acknowledged before the signing, sealing, and delivering of these presents, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, release, convey, and deliver unto the said Isaac L. Lyon, his heirs and assigns, all that tract or parcel of land lying and being in the county of Bexar, in the city of San Antonio, at the northeast corner of Soledad street and of the fourth cross street or alley (running east and west) north of the main plaza of said city, beginning at the northeast corner of a lot of P. C. Taylor, on Soledad street; thence with line of Soledad street N. 2¾° W. 27¼ varas to the corner of the above-mentioned alley; thence with said alley N. 88° W. 27¾ varas; thence S. 5¾ E. 27⅛ varas; thence S. 87½ E. 26¼ varas to the place of beginning, together with all and singular the rights, members, hereditaments, and appurtenances to the same belonging, or in anywise incident or appertaining; to have and to hold all and singular the premises above mentioned unto the said Isaac L. Lyon, his assigns, forever.

105 And we do hereby bind ourselves, our heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said Isaac L. Lyon, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same, or any party thereof.

In testimony whereof we have hereunto subscribed our names and affixed our seals, using scrawls for seals, in the city of San Antonio, this sixteenth day of August, A. D. one thousand eight hundred and sixty.

LINO AROCHA. [SEAL.]

her
ENCARNACION URRUTIA + DE AROCHA. [SEAL.]
mark.

Signed, sealed, and delivered in the presence of—

THE STATE OF TEXAS,
County of Bexar:

Before me, William H. Cleveland, a notary in and for said county, personally appeared the within named Lino Arocha and Encarnacion Urrutia, his wife, to me well known, who acknowledged that they each had signed, sealed, and delivered the instrument of writing on the reverse hereof, and they declared the same to be their act and deed for

the purposes and considerations therein stated; and the said En-
106 carnacion Urrutia having been examined by me privily and apart from her husband, and having the same fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

In testimony whereof, I hereunto sign my name and fix the impress of my official seal, at office in San Antonio, this 16th day of August, A. D. 1860.

[L. S.] W. H. CLEVELAND,
Not. Public.

THE STATE OF TEXAS,
County of Bexar:

I, Sam. S. Smith, clerk of the county court of said county, do hereby certify that the instrument of writing on the reverse hereof, with its certificate of authentication, was filed for registration in my office the 18th day of August, A. D. 1860, at 8½ o'clock a. m., and duly recorded the 8th day of October, A. D. 1860, at 4 o'clock p. m., in the records of said county, in book S. No. 1, on pages Nos. 375 & 376.

Witness my hand and the seal of the county court of said county, at office in San Antonio, the day and year last above written.

[L. S.] SAM. S. SMITH,
Clerk of the County Court, Bexar County.

107 *Agreement of counsel in the cases at law applicable to the chancery suits.*

Agreement of counsel, endorsed, to wit: "No. 1300 & Nos. 1324 to 1329. U. S. c. c't. I. L. Lyon vs. sundry parties. Agreement of counsel. Filed June 2d, 1873. M. Hopkins, cl'k."

Which is in words following:

In U. S. circuit court, west. dist. Texas, at Austin.

I. L. LYON *vs.* J. & K. HERNANDEZ. } 1300.

I. L. LYON *vs.* FRANZ POLLOK ET AL. } 1324.

I. L. LYON *vs.* FRANZ OSYKE ET AL. } 1325.

I. L. LYON *vs.* FRANK KIELBAZA. } 1326.

I. L. LYON *vs.* J. J. MORANCE. } 1327.

I. L. LYON
vs.
ADAM SONELL. } 1328.

I. L. LYON
vs.
CHARLES FULM ET AL. } 1329.

We, Chandler, Carleton & Robertson, attorneys for the plaintiff, and Waelder & Upson, attorneys for the defendants, in the above numbered and styled causes, now pending in the circuit court of the United States for the western district of Texas, at Austin. have and do agree as follows, and admit the following facts to be true:

1st. That testimony which has heretofore been taken or may hereafter be taken by either the party plaintiff, or any of the parties defendant, in any of the above numbered and styled causes, may be
108 read in evidence in each and all the other causes above stated, subject to each and every exception which could or might be taken to its introduction as evidence in the cause in which it has or may be hereafter taken, but no objection shall be made to the introduction of depositions because they were taken before answer filed.

2nd. It is admitted, without proof being required of the fact, that the plaintiff, Isaac L. Lyon, plaintiff in each and all the aforesaid causes, was on the 1st day of August, 1865, the legal and equitable owner in fee-simple of each and every parcel of land described in each of the petitions filed in the above described causes.

3rd. It is further admitted, without pro'*ff* being required of the fact, that all the defendants in the above described causes were at the date of filing the said petitions in said causes, and now are, in possession of the tracts of land described in said petition, that is to say, the defendants in each several action are in possession of the tract described in the petition filed in such action.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for I. L. Lyon.

WAELDER & UPSON,
Att'ys for the Several Defendants.

109 JESUS & K. HERNANDEZ
vs.
I. L. LYON. } No. 70.

JOSEPH MORAUITZ
vs.
I. L. LYON. } No. 71.

H. & K. POLLOCK
vs.
I. L. LYON. } No. 72.

FRANZ OSYKE
vs.
I. L. LYON. } No. 73.

ADAM GOWELL
vs.
I. L. LYON. } No. 74.

JOHN SAVERSICK
vs.
I. L. LYON. } No. 75.

FRANK KIELBUSA
vs.
I. L. LYON. } No. 76.

110 Whereas No. 70 & 72 of the foregoing styled and numbered suits in the United States court for the western district of Texas, at Austin, have been tried & *and* judgment and decrees rendered in favor of the complainants;

And whereas the defendants in said causes 70 & 72 have appealed from the decree therein rendered to the Supreme Court of the United States; now it is hereby agreed by and between the parties hereto, acting by and through their attorneys and solicitors, that whatever judgment shall be rendered by said Supreme Court in said two last-named suits shall also be rendered in each and all the aforesaid causes, as soon as causes numbers 70 & 72 shall be decided in the Supreme Court of the United States.

And it is further agreed that the defendant in said suit No. 72 may have until January 1st, 1876, in which to file the record in the Supreme Court of the United States at Washington City.

Witness our hands, at Austin, this 27 day of Nov'r, 1875.

WAELDER & UPSON &
WALTON, GREEN & HILL, *For Compl'ts.*
CHANDLER, CARLETON & ROBERTSON,
For Def'ts.

111 *Petition for appeal.—Filed Feb.* 17, 1875.—*M. Hopkins, cl'k.*

In the circuit court of the United States of America for the western district of Texas, holding session at the city of Austin.

FRANZ POLLOCK & CATHRINE POLLOCK,
complainants,
vs.
ISAAC L. LYON. } No. 72. Chancery.

To the honorable the circuit judges of the circuit court of the United States for the western district of Texas, at Austin:

The petition of Isaac L. Lyon, a resident citizen of the county of Wayne, and State of Michigan, respectfully represents:

That during the present term (Jan'y term, 1875) of the circuit court of the United States for the western district of Texas, at Austin, to wit, on the 8th day of February, A. D. 1875, a final decree was rendered by said court in a certain cause there pending in said court, in chancery, wherein Franz Pollock & Catherine Pollock were complainants, and Isaac L. Lyon was defendant, as by the proceedings in said cause now remaining of record in this court will fully appear; that
112 the decree so rendered was erroneous, imperfect, and contrary to the rights of said defendants and the princip*als* of equity in several respects: First, in rendering a judgment and decree in favor of the complainants, direct*ly* the defendant to convey the land described in complainants' bill of complaint to the complainants; and, second, for not

dismissing complainants' said bill of complaint dissolving the injunction prayed for in said bill, and in not rendering judgement and decree for the defendant, and in not doing full and complete justice to the defendant in other respects, as will appear by reference to the proceedings in said cause; for which said errors and irregula*tions* and such others as may appear in the proceedings of said cause, which may be cognizable by the appellate court, the said defendant, Isaac L. Lyon, claims an appeal from the said decree of said circuit court to the Supreme Court of the United States, at its next term at Washington.

Wherefore your petitioner prays your honors to grant him such appeal, upon the usual terms.

CHANDLER, CARLETON & ROBERTSON,
Counsel for Petitioner.

Appeal allowed.

T. H. DUVAL,
U. S. Judge.

113 *Bond for appeal.—Filed Feb.* 17, 1875.—*M. Hopkins, cl'k.*

Bond for appeal is endorsed, to wit: "No. 72 vs. Isaac L. Lyon. Filed Feb. 17, 1875. M. Hopkins, cl'k." And is in words, to wit:

UNITED STATES OF AMERICA,
Western District of Texas:

Know all men by these presents that we, Isaac L. Lyon, a resident citizen of the county of Wayne and State of Michigan, F. W. Chandler, Fred. Carleton, J. W. Robinson, and R. Peck, all resident citizens of the county of Travis and State of Texas, are held and firmly bound unto Franz Pollock and Catherine Pollock, in the full and just sum of five hundred dollars, to be paid to the said obligees, their certain attorneys, executors, administrators, or assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals & dated this 17th day of February, A. D. 1875.

Whereas at a term of the circuit court of the United States for the western district of Texas, at Austin, in a cause pending in said
114 court, wherein Franz Pollock and Catherine Pollock were complainants, and Isaac L. Lyon, one of the obligees herein, was defendant, said cause being numbered seventy-two on the chancery docket, a decree was rendered in favor of said complainants, directing the defendant to convey to them, said complainants, certain real estate in their said bill described, said decree being entered on the 8th day of February, 1875, a day during the term of said court commencing on the 1st Monday of January, A. D. 1875, and the said Isaac L. Lyon having obtained an appeal to reverse the decree in said cause rendered and entered as aforesaid, and also a citation directed to the said obligees herein, citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington on the 2nd Monday in October next:

Now the condition of the above obligation is such that if the said obligor, Isaac L. Lyon, shall prosecute his appeal to effect, and an-
115 swer all damages and costs if he fails to make his plea good, then

the above obligation to be null and void, otherwise to remain in full force and effect.

ISAAC L. LYON, [SEAL.]
By F. W. CHANDLER, *Agent.*
F. W. CHANDLER. [SEAL.]
FRED. CARLETON. [SEAL.]
J. W. ROBERTSON. [SEAL.]
R. H. PECK. [SEAL.]

Approved.

T. H. DUVAL,
U. S. Judge.

116 *Citation on appeal.*

Citation on appeal is endorsed to wit: "Isaac L. Lyon, appellant, vs. Franz Pollock and Catherine Pollock, appellees. No. 72. In equity. Citation on appeal issued 28 Sept., 1875. M. Hopkins, clerk." And is in words to wit:

UNITED STATES OF AMERICA:

In the United States circuit court, 5th circuit, western district of Texas, at Austin.

ISAAC L. LYON, APPELLANT,
vs.
FRANZ POLLOCK AND CATHERINE POLLOCK, appellees.

The President of the United States to Franz Pollock and Catherine Pollock, or their attorneys of record, Jacob Waelder or William M. Walton:

You are hereby cited and admonished to appear at the next term of the Supreme Court of the United States, to be held at Washington on the second Monday of October next, to show cause, if any there be, why the decree rendered in your favor by the circuit court of the
117 United States sitting in chancery at Austin, in said district, in a certain cause depending between Franz Pollock and Catherine Pollock *vs.* complainants, and Isaac L. Lyon, defendant, numbered 72, on the chancery docket of said court at Austin, should not be reversed and speedy justice be done to the parties in that behalf, in pursuance of an appeal obtained by the said Issac L. Lyon, the said defendant, according to his petition filed in the circuit court of the United States for the western district of Texas, at Austin.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, at Austin *at Austin*, this 28 day of September, A. D. 1875.

T. H. DUVAL,
U. S. Judge.

Test with seal of court.
[L. S.]

M. HOPKINS, *Clerk.*

Marshal's return.

Came to hand Sept. 28, 1875. Executed Sept. 29, 1875, by delivering

to W. M. Walton, one of the attorneys of record named within, in person, a true copy of this citation on appeal.

THO'S F. PURNELL,
U. S. Marshal,
Per H. P. PURNELL, *Deputy.*

118 I, Mathew Hopkins, clerk of the circuit court of the United States in and for the western district of Texas, at Austin, do hereby certify that the foregoing pages, numbered from one to one hundred and eighteen, contain a full, true, and correct transcript of the record in case No. 72, chancery, entitled Franz and Catherine Pollock versus Isaac L. Lyon, as they appear of file and record in this court.

In testimony whereof I hereunto set my hand and the impress of the seal of said court, at Austin, this 24th day of December, A. D. 1875.

[SEAL.] M. HOPKINS, *Clerk.*

(Indorsement on cover:) No. 339. Isaac L. Lyon, appellant, vs. Franz Pollock and Catharine Pollock. W. Texas. C. C. U. S. Filed 3 January, 1876.

UNITED STATES SUPREME COURT.

OCTOBER TERM, A. D, 1878.

ISAAC S. LYON
vs.
F. POLLOCK ET AL. } No. 78.

Brief for Appellant.

This case is similar to that of *Lyon* vs. *Hernandez*, No. 49, which has been heretofore argued. *

Pollock purchased from Paschal the premises in controversy, and received from him a deed signed as attorney for Lyon. This was in October, 1865.

Lyon, denying the authority of Paschal to sell, brought his action at law in the Circuit Court U. S., against Pollock, and recovered a judgment for the land in 1873.

Thereupon Pollock filed his bill on the equity side of the same court, praying that Lyon should be enjoined from enforcing his judgment, and should be decreed to convey the premises to complainant, on the ground that he had authorized Paschal to sell, and had ratified the sale.

In the case of Hernandez we contended that the

* ~~Error to the~~ The court decreed that Lyon should convey to Pollock the land in controversy. This Decree we assign for Error. The Bill should have been dismissed.

question whether Paschal had authority to sell was finally determined by the result of the action at law, and, further, that the bill wholly failed to show a ratification.

It is unnecessary to repeat here the arguments there used. The facts of the two cases are the same, except in this particular: there is no evidence in this case tending to show any ratification on the part of Lyon.

There is therefore, nothing to overcome the positive denials of the answer.

The bill, however, asks in the alternative that if a conveyance cannot be decreed, he should be allowed, in accordance with the statute of Texas, the value of improvements.

In the case of Hernandez we argued that the bill could not be sustained on this ground. The statute gave the right to receive compensation for improvements, in the action of trespass to try title, provided the jury found they had been made by the defendant, and that he was a *bona fide* possessor. The complainant therefore had a plain remedy at law.

We further insisted that by the decisions of the Supreme Court of Texas, complainant was not a *bona fide* possessor, as he purchased under a supposed power of attorney, which did not authorize the sale.

In addition to what was said in that case, we maintain that it could not have been intended by the Texas statute to give relief for improvements to an unsuccessful defendant in ejectment, while he was still contesting the title of the plaintiff.

Miles vs. *Caldwell*, 2 Wall., 44.

Even were the complainant able to establish that he was a *bona fide* possessor he could not snstain this bill to obtain affirmative relief for improvements.

The fact of improvements having been made in error, where such error was not abetted by the owner, creates no equity for reimbursement of their expense.

In order to the introduction of this equity it is essential that there be intentional deceit in the defendant, or, at all events, that degree of gross negligence which amounts to evidence of an intent to deceive.

Adams Equity, p. 309;
Green vs. *Putnam*, 6 Paige, ch. 405;
Carver vs. *Jackson*, 4 Pet., 101;
Green vs. *Biddle*, 8 Wh., 2.

In the absence of any fraud the rule is *caveat emptor*.

2 Kent Com., 386.

In the case at bar the complainant has wholly failed to establish any acquiescense or conduct on the part of Lyon which might be construed as a fraud. He has, therefore, failed to establish the only ground upon which a court of equity can deprive an owner of his legal rights or hamper their assertion with conditions.

The decree below should be reversed with directions to dismiss the bill.

P. PHILLIPS,
W. HALLETT PHILLIPS,
Sol'rs for Lyon.